

Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CV-22538-RKA

PIERCE ROBERTSON, et al.,

Miami, Florida

Plaintiff(s),

January 6, 2023

vs.

MARK CUBAN, et al.

Defendant(s) .

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DISCOVERY HEARING

TRANSCRIBED FROM DIGITAL AUDIO RECORDING

BEFORE THE HONORABLE LISETTE M. REID

UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): ADAM MOSKOWITZ, ESQ.
JOSEPH M. KAYE, ESQ.
HOWARD M. BUSHMAN, ESQ.
THE MOSKOWITZ LAW FIRM, PLLC
2 Alhambra Plaza
Coral Gables, FL 33134
(305) 740-1423
adam@moskowitz-law.com
joseph@moskowitz-law.com
howard@moskowitz-law.com

1 APPEARANCES (CONT'D)

2
3 FOR THE PLAINTIFF(S) : DAVID BOIES, ESQ.
TYLER ULRICH, ESQ.
ALEXANDER BOIES, ESQ.
BOIES SCHILLER & FLEXNER
5 333 Main Street
Armonk, NY 10504
(914) 749-8200
dboies@bsfllp.com
tulrich@bsfllp.com
aboies@bsfllp.com
6
7
8

9 STEPHEN N. ZACK, ESQ.
BOIES SCHILLER & FLEXNER
10 100 SE 2nd Street
Miami, FL 33131
(305) 539-8400
szack@bsfllp.com
11
12

13 FOR THE DEFENDANT(S) : STEPHEN A. BEST, ESQ.
14 RACHEL O. WOLKINSON, ESQ.
BROWN RUDNICK, LLP
15 601 Thirteenth Street NW
Washington, DC 20005
(202) 536-1737
sbest@brownrudnick.com
rwolkinson@brownrudnick.com
16
17
18

19 SIGMUND WISSNER-GROSS, ESQ.
JESSICA N. MEYERS, ESQ.
BROWN RUDNICK, LLP
20 Seven Times Square
21 New York, NY 11036
(212) 209-4930
swissner-gross@brownrudnick.com
jmeyers@brownrudnick.com
22
23
24
25

1 APPEARANCES (CONT'D)

2
3 FOR THE DEFENDANT(S) : ALEXANDRA LYN TIFFORD, ESQ.
4 CHRISTOPHER E. KNIGHT, ESQ.
5 ESTHER GALICIA, ESQ.
6 FOWLER WHITE BURNETT
7 1395 Brickell Avenue
Miami, FL 33131
(305) 728-7539
atifford@fowler-white.com
cknight@fowler-white.com
egalicia@fowler-white.com

8
9
10 TRANSCRIBED BY: Joanne Mancari, RPR, CRR, CSR
Court Reporter
jemancari@gmail.com

1 Thereupon,

2 the following proceedings were held via Zoom videoconference:

3 THE COURT: Good morning. So we are here to discuss
4 some discovery matters in case No. 22 22538.

5 I would like appearances from counsel. Let's start
6 with the plaintiffs.

7 MR. MOSKOWITZ: Good morning, your Honor. Thank you
8 again for giving us this time. This is Adam Moskowitz, from
9 the Moskowitz Law Firm, and with me I have my partners Joey
10 Kaye and Howard Bushman.

11 THE COURT: OK. Very good.

12 MR. BOIES: Good morning, your Honor. This is David
13 Boies, of Boies Schiller Flexner, also representing the
14 plaintiffs, and with me today I have my colleagues Steve Zack,
15 Tyler Ulrich, and Alexander Boies.

16 THE COURT: Very good.

17 MR. BOIES: I think those are the only people on.
18 Mr. Zack had people and he will identify them.

19 THE COURT: OK. Very good.

20 The defendants.

21 MR. BEST: Good morning, your Honor. Christopher
22 Knight, from Fowler White Burnett, and from Fowler White I also
23 have Ally Tifford and Esther Galicia.

24 The Brown Rudnick firm is also on the line. Sig
25 Wissner-Gross, who will be handling here, of course will

1 introduce his team.

2 MR. WISSNER-GROSS: Good morning, your Honor. Happy
3 New Year. Joining me are Rachel Wolkinson and Steve Best, who
4 will be participating as well.

5 THE COURT: OK. I am going to switch from full view
6 to speaker view. Since there are so many people on the screen,
7 it will make it a lot easier.

8 All right. So, Mr. Moskowitz, we will start with
9 looking at the issues that you are concerned about and we will
10 do our best to get through all of these issues today. I think
11 some of them are overlapping between the plaintiffs and
12 defendants.

13 MR. MOSKOWITZ: I think they are, your Honor, and
14 thank you so much and thank you to our excellent opposing
15 counsel. It's been wonderful dealing with them almost on a
16 daily basis. They have all been very cooperative.

17 I think we have three issues mainly to focus on, and
18 we need a little help from your Honor just to move these things
19 along. I have got about just five minutes. I will go through
20 them all, and then Mr. Boies will have just one or two minutes,
21 and then we will turn it over to our fine esteemed defense
22 counsel.

23 Joey, why don't you help me with putting up the
24 slides. I think we have like five today that I made. They are
25 not professionally done, your Honor, so excuse me for my

1 creativity.

2 So let's take it from where we left off. We left your
3 Honor at December 20th, if you remember, and at the end of the
4 hearing we said that we worked together on an extension of time
5 because we needed to do a little bit more discovery and we were
6 going to possibly add a couple of plaintiffs from Florida,
7 which is their right.

8 After the hearing the defendants changed their mind
9 and they didn't want us to do a joint motion because they said
10 some of the discovery should not be extended, some of their
11 arguments, which they have every right to raise. So we filed
12 our own expedited motion for an extension of time until
13 February 24th. So that's now the set date.

14 We can amend our complaint, and we are going to
15 certainly ask for leave to possibly add a couple of Florida
16 plaintiffs and make a couple of other corrections to the
17 complaint, and we made the arguments to Judge Altman that --
18 again, this is a simple case -- if these are unregistered
19 securities, if every single one of the Voyager interest
20 accounts is unregistered and Mr. Cuban did any promotion,
21 that's all that plaintiffs need to prove. There is no
22 reliance. It is a strict liability standard. And we state in
23 our motion, they are still attacking plaintiffs that they
24 didn't use the phone or see this. That's not necessary.

25 As we said, after discovery is done and the motion to

1 dismiss is ruled on, we are going to move for certification,
2 which we have already done. We did it early in the case. He
3 said do it after the motion to dismiss. And we are going to
4 move for summary judgment, because that is all -- really the
5 heart of this case is are these unregistered securities and did
6 Mr. Cuban promote them. Because if he did, the law is strict
7 liability.

8 So Judge Altman granted it. He said there is no
9 separating of the discovery. We are going to let the
10 plaintiffs have all of the time until February 24th.

11 Joey.

12 So what's important is your Honor ruled on three
13 issues, at least for us. We can get the plaintiffs' documents
14 in discovery. First your Honor ruled that we are to get all
15 jurisdictional discovery by January 3rd. We really haven't
16 gotten any, and we are going to explain to you why we really
17 have gotten none.

18 This isn't our first rodeo. We spent seven months
19 against Voyager doing jurisdictional discovery as well, and
20 they produced none. Then we were able to find out that Florida
21 was one of the largest states for Voyager. Maybe \$40 million
22 were in profits. So we understand that, and we will go through
23 that.

24 Second, we asked for just two depositions, and this is
25 months ago. They identified four people that had personal

1 knowledge of the Voyager/Mavericks agreement, four that worked
2 for the Mavericks. Two they said were lawyers and two were not
3 lawyers.

4 So Mr. Mackey and Mr. Tapply are the marketing
5 directors and they are in communications, and we asked for
6 their depositions. They have not given us any dates. And we
7 will show your Honor said you could take them in January, and
8 we said again, very reasonably, any time, anyplace, just let us
9 know. They said they are not available.

10 Then finally we asked for a date for Mr. Cuban's
11 deposition, and they said we are going to give you one, but you
12 are going to limit your deposition of him to just jurisdiction.
13 We said why. We had a discussion about this with your Honor.
14 Judge Altman denied the motion to stay. We are staggering the
15 jurisdiction and the merits discovery like you wanted. You
16 asked us to wait. We said don't take the Mavericks' officials
17 that are attorneys, so we will wait for them too. But what
18 grounds would it be to limit Mr. Cuban's deposition? It is the
19 same time limits.

20 We have serious questions here about trading, insider
21 trading, how much did he receive. These are all, as you will
22 see, going to be relevant for jurisdiction.

23 Mr. Cuban had his own Voyager account. What is in it?
24 Is there \$5? Is there \$500 million? That's clearly relevant
25 for jurisdictional discovery because you have to say, do you

1 have a financial interest in what you are doing. So we need to
2 find that.

3 What happened yesterday, surprisingly, is in three
4 weeks we have our first third-party deposition, and it is Mr.
5 Ehrlich. He was the CEO of Voyager. Main guy. So he was all
6 set to be deposed and give us all his documents in three weeks.

7 Mr. Cuban's counsel emails him and says, we want to
8 let you know Judge Reid has bifurcated discovery, so you don't
9 really have to give all your discovery, but you could just give
10 them the jurisdictional discovery. We said, what are you
11 kidding? Mr. Ehrlich was set five months ago for deposition;
12 he's got to produce his documents.

13 The problem is, I am sure he is going to produce a lot
14 of jurisdictional discovery that we didn't get from Mr. Cuban,
15 because we said to him, we want all documents regarding this
16 press conference. So that is something separate. He is not
17 going to appear today, the counsel for Mr. Ehrlich, but he may
18 object, he said, at some later date. But what would be the
19 grounds to limit Mr. Cuban's deposition? It is the same thing.

20 Joey, let's go to the second slide.

21 So I am not going to go through those video clips we
22 played with your Honor last week. We played seven of them.

23 THE COURT: We don't need to hear them again. I
24 understand the issues.

25 MR. MOSKOWITZ: We are not going to play them at all,

1 but the reason they are important is because it is a major
2 international press conference that was live on the internet --

3 THE COURT: No, I understand.

4 MR. MOSKOWITZ: -- that was planned -- I'm sorry?

5 THE COURT: I understand, and you did make that clear.

6 MR. MOSKOWITZ: Yes.

7 THE COURT: Let me go back to this. There is a
8 question as to bifurcated discovery. Is that something the
9 plaintiffs wanted? Is there some reason to bifurcate
10 discovery? Let's talk about that.

11 MR. MOSKOWITZ: Thank you, your Honor.

12 MR. KNIGHT: Your Honor, if we could have Mr. --

13 MR. MOSKOWITZ: Not at all, your Honor --

14 MR. KNIGHT: I would just --

15 MR. MOSKOWITZ: -- for the plaintiffs. We didn't want
16 to bifurcate anything.

17 THE COURT: OK.

18 MR. MOSKOWITZ: Judge Altman has decided, Judge Altman
19 said, I am not staying, I am not bifurcating discovery.

20 THE COURT: OK.

21 MR. MOSKOWITZ: What the defendants tried to say is
22 somehow your Honor at December 20th said there is a bifurcation
23 between jurisdiction and merits. We agree that they had to
24 produce all their jurisdiction discovery by January 3rd and all
25 the others by January 13th.

1 THE COURT: Because there was a deadline that was
2 looming, at least --

3 MR. MOSKOWITZ: Absolutely.

4 THE COURT: -- with respect to that. OK.

5 MR. MOSKOWITZ: Right on point, your Honor. But you
6 said, if you could go to Judge Altman and you could get a
7 little bit of time, then we don't really have to worry about
8 these time limits. And we did. And Judge Altman entered an
9 order saying, I understand that you are now getting all this
10 discovery. You haven't yet taken Mr. Cuban's deposition after
11 five months. Now they are going to give you a date until
12 February 24th, should give everybody time to get all of the
13 discovery because I am not staying any discovery.

14 THE COURT: OK.

15 MR. MOSKOWITZ: That is what Judge Altman said.

16 THE COURT: Thank you, Mr. Moskowitz.

17 Let me see if I can turn to Mr. Knight or
18 Mr. Wissner-Gross and see if I can get a response on that
19 issue.

20 MR. WISSNER-GROSS: Your Honor, thank you very much.
21 Actually, we have a little bit of a PowerPoint. If we want to
22 do it issue by issue, we are happy to.

23 Maybe the best way, John, if you could take over and
24 we will address his point.

25 THE COURT: I would like to do issue by issue. It is

1 a little easier for me, and that is an important issue.

2 MR. WISSNER-GROSS: John, if you could put up the
3 slide dec.

4 Just at a high level, your Honor, I think from our
5 perspective we think that the main issue is that we do need to
6 get jurisdictional discovery completed by mid-February.

7 It is correct that at the December 20th conference
8 your Honor did direct that Mr. Cuban's deposition, which has
9 been set now for February 2nd, should focus on jurisdictional
10 discovery, and I guess I will have to fact check Mr. Moskowitz
11 as we go, but Judge Altman did not weigh in the way he
12 described it. Judge Altman referred all discovery issues to
13 your Honor, and it is clearly within your Honor's purview to
14 decide how and in what order discovery should proceed.

15 THE COURT: OK.

16 MR. WISSNER-GROSS: With that context in mind, your
17 Honor, the defendants have been fully compliant with what we
18 were directed to.

19 So let's start with --

20 THE COURT: Perhaps I should have made myself clear.
21 It may be my fault here, and I want to just jump in.

22 What we were talking about at the time was there was
23 an urgent deadline for the response to the motion to dismiss on
24 the jurisdictional issue, so I had some concern, because I
25 think at that time it wasn't possible to get all of the

1 discovery within the deadline that we needed. Once you got the
2 extension, it seems to me to be more efficient to simply move
3 forward with your depositions and your discovery at this point.

4 MR. WISSNER-GROSS: Let me address that, your Honor.

5 If we can get the slide back on.

6 Let's talk about -- John, are you able to take over?

7 A VOICE: Yes. One second.

8 MR. BEST: Your Honor, while they are taking over --
9 this is Stephen Best -- also framed in that discussion at our
10 earlier hearing was the fact that we had concerns that the
11 plaintiffs, the Florida-based plaintiffs, had any standing in
12 this case. So we can fact check again what Mr. Moskowitz has
13 said, but so far the evidence is clear there is no standing for
14 the Florida-based plaintiffs in this case, which is part and
15 parcel as to why we asked for jurisdictional discovery to go
16 first.

17 I am going to turn it back to Mr. Wissner-Gross.

18 MR. WISSNER-GROSS: First fact check, your Honor,
19 Mr. Moskowitz just said there weren't documents produced by the
20 Mavs. Well, that is just factually not correct.

21 On January 3rd, after a huge amount of effort,
22 reflected on this slide --

23 MR. BEST: Sir, why don't we focus on what the court
24 has asked for, which is why there should be limited
25 jurisdictional --

1 MR. WISSNER-GROSS: We will get to that very quickly.
2 I wanted to address this point.

3 We produced over 1100 pages of documents on
4 jurisdiction, all of which, if you go to the next slide,
5 confirm that what was said in the declarations on the
6 jurisdictional motion were all correct. There is limited
7 contact with Florida. The Mavs and Mr. Cuban came here for
8 away games. Mr. Cuban came here a couple of times on a
9 personal vacation. He never met with Mr. Ehrlich at any point
10 in time, including at a crypto conference in January.

11 Go to the next slide.

12 MR. BEST: Let me just interject, Sig.

13 Your Honor, not only did we produce all these
14 documents, but we sent a cover letter identifying, in
15 chronological form, the events that took place, citing the
16 Bates numbers for these documents, and having, if you will, a
17 full detailed chronology of the jurisdictional events at issue.

18 So not only did we produce documents, but we
19 accompanied it with work product showing a summary of the
20 chronology so that it would make it easy for plaintiffs to walk
21 through the documents we provided for them.

22 MR. WISSNER-GROSS: So it is critical, your Honor --
23 if we go to the next slide -- to understand the significance of
24 the jurisdictional discovery, why that should be the focus,
25 plus the fact that there are three Florida plaintiffs, we

1 think, who have completely fabricated, manufactured claims. We
2 think we have already seen evidence of perjury in declarations
3 they have submitted. That is why we wanted to accelerate their
4 depositions, have them in Florida. Unfortunately,
5 Mr. Robertson has fled the jurisdiction and is in Illinois.

6 On the issue of why it makes sense to limit
7 Mr. Cuban's deposition to jurisdictional issues, well, we
8 recognize, obviously, your Honor had made that comment at the
9 hearing on the 20th, but there are several extremely practical
10 reasons for doing so.

11 At various points, and I try to keep track of how many
12 different people Mr. Moskowitz has threatened to add to the
13 case. By my latest calculations it is either five or six
14 additional defendants that he wants to add. He has noticed the
15 deposition of Mr. Gronkowski, the former NFL football player.
16 He claims to have served a deposition notice on Sullivan &
17 Cromwell, the law firm for FTX, which he said he might add.
18 What they do in this lawsuit remains to be seen, although he
19 has a related case against FTX. He has threatened to bring in
20 the National Women's Soccer League.

21 All of these, at least Mr. Gronkowski and the Women's
22 Soccer League, because of other associations of sponsorship
23 agreements or otherwise with Voyager, and he's even threatened
24 to bring in others as well.

25 It makes certainly sound sense that for Mr. Cuban, who

1 doesn't even think he should be in the case jurisdictionally,
2 to have an opportunity of having all fact -- all jurisdictional
3 issues developed, teed up, and completed before Mr. Moskowitz
4 either amends his complaint or responds to the pending motion
5 to dismiss; otherwise, we are going to be subject to more than
6 one deposition of Mr. Cuban.

7 What Mr. Moskowitz just said, frankly, I think he
8 makes it up out of thin air, unfortunately, about what he
9 thinks he is going to find at a deposition of Mr. Cuban.
10 Mr. Cuban appeared once, your Honor.

11 THE COURT: Thank you, Mr. Wissner-Gross, and I hear
12 you. It is just, I think on both sides of this case I am
13 hearing a lot of substantive argument and I want to simply stay
14 focused on whether the discovery should be bifurcated or not.

15 MR. WISSNER-GROSS: Your Honor, let me tell you what
16 we are proposing and not proposing.

17 THE COURT: OK.

18 MR. WISSNER-GROSS: We are prepared, and we have been
19 directed, to produce merits documents beginning, on a rolling
20 basis, on January 13th. We have begun that process. There are
21 a lot of documents. There were 45,000 documents that have been
22 identified. We reviewed about 25,000 today. We are going to
23 start producing documents on January 13th on a rolling basis,
24 although we completed the production of jurisdictional
25 documents. We are saying, fine, go ahead, we are going to

1 produce that to you; we are going to produce on a rolling
2 basis.

3 What we are saying, though, is, as to Mr. Cuban, it
4 makes eminent sense to have his deposition limited to the issue
5 of jurisdiction. I proposed that they are limited to the seven
6 hours, and that if they use two hours on jurisdiction, they
7 only have five hours left. We are not going to advance that
8 position. We think his jurisdictional deposition probably
9 needs no more than an hour or two, but it is a short
10 deposition. Let them take that.

11 They are going to get the documents produced on a
12 rolling basis. As far as any issue of any substantive
13 deposition, frankly, I would like to see if he is dismissed
14 from the case. But at a minimum, if they are going to bring in
15 five or six new defendants, which Mr. Moskowitz repeatedly
16 threatens to do and he is talking about new plaintiffs, many
17 new defendants, maybe change the theory of his case, it
18 certainly makes sense to wait for Mr. Cuban's substantive
19 deposition on the merits until he knows who the defendants are,
20 what claims are in the case, etc. There is absolutely no
21 prejudice whatsoever to the plaintiffs to do that.

22 So it is bifurcation in the sense of let's take his
23 jurisdictional deposition. We have locked in a date. He will
24 get documents. Whatever he is going to do in terms of amending
25 the complaint. Frankly, no matter what he gets it is not going

1 to solve the jurisdictional problem, which is a gating issue.
2 Let's get that completed. The thought is, let's keep the case
3 moving.

4 Yes, we are going to produce the jurisdictional stuff
5 and we will start producing the balance of the documents on a
6 rolling basis starting on January 13.

7 We haven't even gotten to the plaintiffs, your Honor,
8 which I -- we haven't gotten any cooperation from the
9 plaintiffs. We have gotten some documents from Voyager.

10 Your Honor, if you remember, you had suggested, after
11 we wanted to depose all 12, you said, we don't want them flying
12 in by jet. So we said let's take the three Florida plaintiffs,
13 and we still haven't gotten their full production. We have
14 gotten some documents. We got some documents from Voyager. We
15 have been trying, without success, to have the three Florida
16 plaintiffs deposed in Miami. Mr. Robertson, we can go into it,
17 your Honor. There are so many --

18 THE COURT: I want to stick to the issue of the
19 bifurcated discovery and try to resolve that right away.

20 So what you are asking for is that I enter an order
21 allowing the bifurcation of discovery only with respect to
22 Mr. Cuban or with respect to the entire case? I just want to
23 be clear on what you are requesting.

24 MR. WISSNER-GROSS: I think that in terms of
25 deposition, I think what we have heard from Mr. Ehrlich's

1 counsel -- we can get to that also because I think
2 Mr. Moskowitz completely misrepresented what he said Ehrlich's
3 counsel, but that it makes perfect sense to have depositions of
4 the defendants focused initially on jurisdiction.

5 So Mr. Cuban's deposition -- we have dates for later
6 in February for Mr. Mackey and Tapply. I don't think they will
7 add much in jurisdiction.

8 Mr. Ehrlich, his counsel had -- by the way, Mr.
9 Ehrlich was a defendant, was dismissed with prejudice, is a
10 nonparty, lives in Connecticut, represented by separate
11 counsel. He is still the CEO of Voyager, which is in
12 bankruptcy. There is sensitivity about the bankruptcy
13 implications of any deposition.

14 There have been three different forms of subpoena sent
15 on him. None issued out of the Southern District of Florida.
16 For whatever reason Mr. Moskowitz didn't choose to go to
17 Connecticut to get a subpoena issued. So it is all consensual.

18 Mr. Ehrlich's counsel, my understanding, has said,
19 look, I'm prepared to make him available on jurisdictional
20 issues. Mr. Ehrlich has been sued in another class action
21 relating to Voyager, contrary to what Mr. Moskowitz said last
22 time where there is only one case, and he wants to defer any
23 substantive deposition of him until a later point in time.
24 Frankly, there is no prejudice to Mr. Moskowitz on that either.

25 He has offered to produce to him, I gather, various

1 documents.

2 THE COURT: I can tell you, honestly my concern is
3 going to be that we will all get there to deposition and then
4 the questions will be asked and then the argument as to whether
5 some answer is jurisdictional or whether that question is only
6 jurisdictional or it goes to the merits. There may be more
7 disputes over that than it is worth.

8 I think also for the sake of efficiency, honestly, I
9 understand that the gentlemen that we are talking about are all
10 very, very busy individuals. If you present them for
11 deposition and you complete the depositions, they're done.
12 What about the sake of efficiency?

13 MR. BEST: But they are not done, your Honor. This is
14 Stephen Best. You already heard Mr. Moskowitz say he's going
15 to amend the complaint, because he's effectively conceded that
16 the plaintiffs at present, the Florida-based plaintiffs, don't
17 have standing. So we are going to be rehashing this either
18 through an amended complaint, one, or, two, all these
19 individual defendants that he wants to add, Mr. Gronkowski,
20 Sullivan & Cromwell, and then we are going to be back at the
21 table with people getting their shots at subsequent depositions
22 of these people.

23 So indeed, the efficient process, I would argue, is
24 that we limit this to jurisdictional discovery, because we have
25 already heard that Mr. Moskowitz is going to at least seek

1 leave to amend the complaint, which we are going to object to,
2 and so we are going to be in a situation where we have an
3 entire new complaint before us. He is going to come in and say
4 since we have a new complaint, we get to take another set of
5 depositions.

6 MR. WISSNER-GROSS: All the new defendants are going
7 to want to depose everyone.

8 So, your Honor, the way this is typically done -- we
9 understand the mandate to move forward. We are giving you a
10 path. Mr. Moskowitz is going to get plenty of documents. He
11 got a thousand pages already. I don't think it will solve his
12 jurisdictional impediment, but he will be able to see whatever
13 the communications were leading -- let's talk about what he
14 will get in document discovery.

15 He is going to see any communications between Voyager
16 and the Mavs to deal with the sponsorship agreement, the
17 communications in connection with that. There was one press
18 conference on October 27th. He will get everything in
19 connection with that press conference. Unfortunately for
20 Mr. Moskowitz, there were no meetings in Florida, there was no
21 targeting of Florida, etc. So the documents that he will get
22 are not going to help them on jurisdiction, but the documents
23 are going to give him the full story of the very limited, very
24 circumscribed relationship that the Mavs had with Voyager, who
25 also, by the way, had a business relationship with professional

1 athletes, with women's soccer, etc. He is going to get all of
2 this. So if the issue is him having sufficient information to
3 file yet another frivolous complaint or an amendment, he will
4 have it.

5 THE COURT: Right.

6 MR. WISSNER-GROSS: All we are saying is that by
7 directing that Mr. Cuban be deposed on all subjects, all you're
8 doing is inviting Mr. Cuban being deposed a second time when
9 the defendants come in and say they didn't have the
10 opportunity.

11 THE COURT: Let me make sure I understand. Your
12 motion at this point is to bifurcate discovery only with
13 respect to the depositions of which individuals?

14 MR. WISSNER-GROSS: Well, certainly Mr. Cuban. We
15 can't speak for Mr. Ehrlich. A, we don't represent him. He is
16 not before the court. That is really not an issue for today.
17 So we represent Mr. Cuban.

18 Obviously, the Mavs' 30(b)(6) witness -- we haven't
19 talked about that -- we will make someone available, a 30(b)(6)
20 witness, on jurisdiction. I would say there are two marketing
21 guys that they want to depose. We will make them available on
22 jurisdiction as well.

23 We are perfectly happy to bring people back later. We
24 think that the jurisdictional -- actually, the jurisdictional
25 context are so severable and so limited, and that is why we

1 wrote Mr. Moskowitz a letter. We went ahead and summarized all
2 of it for him to save him some work. We think it is actually a
3 very easy exercise here.

4 I can spend a minute, and I think I have already done,
5 outlining the nature of the contacts with Florida. They don't
6 rise to any --

7 THE COURT: I understand.

8 MR. BEST: The depositions should be jurisdictional
9 based only until the motion to dismiss is heard, noting that
10 all of these witnesses can and will be called again,
11 particularly since Mr. Moskowitz has already indicated to this
12 court that he is going to seek leave to amend the complaint.

13 THE COURT: OK.

14 MR. BEST: Thank you.

15 THE COURT: Let me look at the motion to dismiss. Is
16 the motion to dismiss entirely based upon jurisdiction?

17 MR. BEST: No.

18 MR. WISSNER-GROSS: No. There are three elements,
19 your Honor.

20 THE COURT: OK.

21 MR. WISSNER-GROSS: Jurisdiction --

22 THE COURT: That is my concern. Go ahead.

23 MR. WISSNER-GROSS: We said that is a gating issue.
24 We have also said that if the three Florida plaintiffs are gone
25 that under settled law in this district -- it is a diversity

1 case, only a state law claim, which, by the way, contrary to
2 what Mr. Moskowitz said, involves active claims of reliance.
3 So half the complaint is a consumer fraud statute which
4 requires reliance. But if the three Florida plaintiffs are
5 gone, the balance of the plaintiffs have no standing in this
6 jurisdiction.

7 So there is a 10b-5, Rule 9b portion saying these are
8 not cognizable claims under state law of the relevant
9 jurisdictions. Finally, we have argued that Voyager is a
10 necessary party.

11 THE COURT: OK.

12 MR. WISSNER-GROSS: We have told the judge that --

13 THE COURT: Then for the sake of clarity, with respect
14 to all other discovery you're saying, I'm willing to go ahead
15 with all the other discovery. I'm producing the documents on a
16 rolling basis.

17 MR. WISSNER-GROSS: Yes.

18 THE COURT: That's your statement.

19 MR. WISSNER-GROSS: Yes, we are going to produce the
20 documents on a rolling basis. Absolutely.

21 THE COURT: Not just jurisdictional but every document
22 that's been requested.

23 MR. WISSNER-GROSS: We've completed the jurisdictional
24 production. We have done that as directed.

25 THE COURT: OK.

1 MR. WISSNER-GROSS: We are prepared to produce all the
2 other documents on a rolling basis beginning on January 13th.
3 Absolutely.

4 THE COURT: OK. All right. So I think I understand
5 you now.

6 Let me go back to Mr. Moskowitz, Mr. Boies, and hear
7 your position on that argument.

8 MR. BOIES: Your Honor, this is David Boies. If I
9 could just respond to one aspect of it, and that is, counsel
10 keeps saying that they have completed their document production
11 as far as jurisdiction is concerned. We don't agree with that.

12 One of the issues here is they take a very, very
13 limited view of what is relevant to jurisdiction. Counsel said
14 the documents show that there is no targeting of Florida.
15 That's not what the documents show at all.

16 What they have done is they have produced documents
17 that relate to travel to Florida, not all the documents with
18 respect to marketing to Florida, not all the documents relating
19 to the targeting of Florida, not the documents that relate to
20 the fact that one of the purposes was to get people in Florida
21 to participate. So they take a very, very limited and we think
22 unrealistically limited view of jurisdiction.

23 In addition to that, the issues in terms of
24 jurisdiction and merits are very much intertwined. If we take
25 a deposition limited to jurisdiction, I can tell from things

1 they have written already and some of the things they have said
2 today that they are going to take the position, well, your
3 Honor, we are just asking him about his travels to Florida and
4 you ought not to get into what was his account at Voyager, what
5 was his relationship to Voyager and Voyager's marketing to
6 people in Florida, what is his responsibility for Voyager's
7 marketing to Florida.

8 All of those kinds of things are relevant not only to
9 merits but to jurisdiction, and I think it is going to be very
10 difficult to try and separate out merits from jurisdiction in
11 this deposition.

12 The third thing is the argument that they're making
13 today, which is you ought to stay the merits discovery until
14 the motion to dismiss is heard, which is what counsel just said
15 a couple of minutes ago, is exactly what they argued to Judge
16 Altman and Judge Altman wisely, in our view, said no, I am not
17 going to stay discovery. What they are really asking is a
18 rehearing on Judge Altman's decision not to stay discovery.

19 We think that was a wise decision. We think that was
20 the efficient decision. It was, I think, a very considered
21 decision on Judge Altman's part.

22 THE COURT: OK.

23 MR. MOSKOWITZ: Your Honor, if I could just respond a
24 little to the specifics in addition to the excellent points
25 Mr. Boies made.

1 It's been now five months. You hear from four of my
2 esteemed defense counsel they have produced thousands of
3 documents. We got 25 documents. That's it.

4 They are right. They did a narrative. They said
5 these 25 documents greatly support that we never came to Miami.
6 But what does that have to do with the press conference, and
7 that is what I started with, where I showed you Mark Cuban went
8 on the internet and he said to all of the Voyager customers
9 around the country, you need to buy this product because I am a
10 customer, I trust them, and we're trying to get our Mav fans
11 all around the country to buy them. Then a couple of weeks
12 later he comes to Miami. He is the keynote speaker in the
13 largest crypto conference, and he talks here -- remember I
14 showed you the clip -- he said, the Miami audience is great,
15 they're very unique. Well, where are the documents about
16 planning that October press conference?

17 They identify four people with personal knowledge that
18 worked for the Mavericks that know about the Voyager/Mavericks
19 agreement and know about the press conference. Mackey, Tapply,
20 and two others. They promised to give us their deposition in
21 January. We don't have it.

22 When they were looking for documents, did they look to
23 any documents from those four people? We don't have a single
24 one from any of them. So they're saying they produced
25 jurisdictional discovery. No, they didn't. It is like what

1 Mr. Boies said. Yes, Mr. Cuban didn't physically come here 50
2 times, but that press conference targeted the Miami customers,
3 and it was successful.

4 We get to look at the documents. Who were you
5 targeting? Why did you have this national press conference?
6 Who were you trying to reach? How did your numbers go up in
7 Florida to \$40 million afterwards?

8 We are allowed to get that discovery. That is what
9 Judge Altonaga said, and, shockingly, it was all against what
10 Voyager had said, that we have no connections to Florida.
11 Florida was one of their largest states.

12 So all we are saying is you ordered them to produce
13 all jurisdictional discovery, which includes what his financial
14 interest is. So Mr. Cuban has a Voyager account. If there's
15 \$500 million in that account, isn't that relevant? What if
16 there is nothing in that account and he is telling everyone in
17 the country, I'm all in, I love Voyager. That wasn't produced.

18 So give us the jurisdictional discovery, but next week
19 all the merits are due. So give us all of those, and then just
20 give us those two people that you promised to give us in
21 January, Mackey and Tapply. They are the marketing director
22 and the communications director. That is all we asked for.

23 That is why Mr. Boies said when they asked Judge
24 Altman to stay discovery, he said, I peeked at the merits, I
25 think they have a claim. So this is all just regurgitating

1 that argument they lost, and now your Honor has ruled, just
2 give them jurisdictional discovery by January 3rd, give them
3 everything else by next week, give them three depositions.
4 That's it. Tapply, Mackey, and Cuban.

5 We don't think it needs to be bifurcated, limited.
6 What are they scared of? I mean, what are we going to ask
7 Mr. Cuban? I promise you we are not going to ask for his
8 deposition again. I can put that on the record. No matter
9 what we do -- and I am not saying we are going to do an amended
10 complaint. Judge Altman just gave us until February 24th if we
11 want to. But we will make the assurance that we will not
12 depose Mr. Cuban after this February 2nd date. We have one
13 shot at him under the federal rules, and we will use all our
14 time.

15 THE COURT: All right. I hear both parties.

16 While I understand, Mr. Wissner-Gross, your --

17 MR. KNIGHT: Your Honor --

18 THE COURT: -- argument about jurisdiction,
19 jurisdiction is much larger than just presence, and we all know
20 that. At this point jurisdiction has become a difficult and
21 tricky question that relies upon a lot more than just physical
22 presence.

23 My concern is any limitation to jurisdiction is going
24 to be an invitation for more disputes for both sides. It is
25 going to be a lot more efficient if you simply go forward with

1 your deposition.

2 I understand your argument that Judge Altman has given
3 me some discretion in that area, and that is why I am certainly
4 willing to hear your arguments from both sides on the issue of
5 bifurcation, but it doesn't seem to be a practical answer in
6 this type of case.

7 MR. WISSNER-GROSS: Your Honor, if I could give it
8 another shot, just briefly.

9 THE COURT: A motion for reconsideration. OK.

10 MR. WISSNER-GROSS: The reality is that they are
11 claiming targeting of Florida. It is a false premise. If
12 there was targeting of Florida, we would have produced
13 documents that show that. There was a single press conference
14 in Dallas, entirely in Dallas, on January 27th -- excuse me, on
15 October 27, 2021.

16 The way this is -- I am not taking the position that
17 if they think that there are documents that give a basis for an
18 argument of targeting Florida they couldn't ask questions about
19 that. The practical solution is, if issues come up at
20 depositions, your Honor has been very accommodating to us. I
21 don't think it will happen. I think this is a case where
22 limiting the subject to jurisdiction is actually quite easy.

23 MR. BEST: Even if that's a relevant question to ask
24 in jurisdictional discovery, your Honor, and if plaintiffs had
25 taken the opportunity to give to us search terms for us to look

1 for the documents that they are now speaking that are so
2 important to their jurisdictional discovery demands, we would
3 have looked for them. They did not. They refused to give us
4 any search terms. Today is the first day we have ever heard of
5 their interest in this information, which we will provide to
6 them either if anything exists, which it does not, or a
7 representation that no documents exist on these points, we are
8 happy to give that to them.

9 MR. WISSNER-GROSS: We are happy to prioritize on the
10 rolling production all documents in connection with this press
11 conference, that Mr. Moskowitz and Mr. Boies incorrectly claim
12 was in any respect targeting Florida. We are happy to provide
13 that on a priority basis.

14 I said that the discovery on a rolling production is
15 going to show, frankly, the solicitation of Voyager of the Mavs
16 beginning in August of 2021 to become a sponsor of the Mavs.
17 It will show the events in connection with the press
18 conference, and then after that, frankly, for Mr. Cuban, except
19 getting very limited updates, there is no presence or contact
20 with Florida. It is not very complicated.

21 THE COURT: OK. So, Mr. Wissner-Gross, Mr. Best, the
22 fact that there could be this much discussion about
23 jurisdiction already tells me that this is not a clear issue,
24 and in this type of case where there's national marketing of a
25 product, it is a lot more complicated than simple physical

1 presence.

2 So I think what we will do is I am going to deny that
3 request to bifurcate the discovery for the same reasons that
4 Judge Altman does, and we will just go forward with discovery
5 in this case so that we can work efficiently.

6 I am glad that Mr. Moskowitz is willing to state at
7 this juncture, and I think that is a benefit to your client
8 Mr. Cuban, this will be the deposition for Mr. Cuban. I think
9 that is certainly going to be more efficient from Mr. Cuban's
10 point of view.

11 Just to be absolutely clear on my ruling, no
12 bifurcated discovery. Let's move forward with discovery on
13 both sides, both plaintiff and defendant.

14 MR. BEST: I understand your Honor's ruling. I want
15 to state for the record here that we have made it clear that
16 the plaintiffs don't have standing, the Florida-based
17 plaintiffs don't have standing in this case, and that unlike a
18 situation where leave to amend can be made, and indeed that
19 Judge Altman did make a ruling that he would consider leave to
20 amend, he never did it with an understanding that at present
21 that the Florida-based plaintiffs have no standing.

22 So we are in an entirely different universe here of
23 judicial consideration of leave to amend when the argument is
24 at present none of these Florida-based plaintiffs have standing
25 to be in this case, and, therefore, if there is no

1 Florida-based plaintiff that has standing, then this case
2 doesn't have standing. I just wanted to say that for the
3 record and for your Honor's understanding.

4 Thank you.

5 THE COURT: OK. Thank you.

6 So we have ruled on that first issue, that issue with
7 regard to the depositions. Let's talk about the plaintiffs'
8 discovery.

9 The depositions have been set for the plaintiff
10 representatives?

11 MR. WISSNER-GROSS: No. Your Honor, if I could --

12 THE COURT: Yes.

13 MR. WISSNER-GROSS: -- if I could come back to the
14 PowerPoint. I will try to go through this quickly to give you
15 context.

16 THE COURT: You want in-person depositions. OK.

17 MR. WISSNER-GROSS: Yes.

18 So, first of all, your Honor agreed with us on
19 December 20th we should have their depositions in Florida. We
20 wanted to have them in Miami. Obviously, the general rule is
21 plaintiffs should make themselves available for deposition in
22 this district. We think the discovery we have gotten so far
23 has actually reinforced the absolute critical nature of doing
24 in-person depositions.

25 Now, just briefly, as on this slide, each of the

1 plaintiffs, and it is the same generic allegation for each
2 plaintiff, and I am focusing on the Florida plaintiffs in
3 paragraphs 7 to 9 of the amended complaint, they all claim that
4 they acted in reliance on Mr. Cuban and the Mavericks in
5 opening their accounts, in funding their accounts, in trading
6 their accounts. So the issue of reliance is front and center
7 in the allegations of the complaint.

8 The three Florida plaintiffs also in the ill, I guess
9 it was ill-suited, unsuccessful early effort to certify a
10 class, they each filed declarations, sworn declarations, that
11 are summarized below, containing the same generic allegation
12 that they somehow were relying on Mr. Cuban and the Mavs in
13 opening up accounts at Voyager.

14 We have gotten document discovery from Voyager. We
15 served a subpoena on them. We made that discovery available.

16 Actually, before I even get this, I want to confirm
17 that there is some confidential information I do want to share
18 that came from Voyager. I want to make sure there is no one on
19 the call other than attorneys and court personnel.

20 Can we just confirm that first?

21 THE COURT: Let me see if I can go back to full view
22 and see who is here.

23 MR. BOIES: We certainly don't want -- this is David
24 Boies. There is certainly no one with me other than counsel.

25 MR. WISSNER-GROSS: Right. I'm assuming there are no

1 reporters, etc., participating, your Honor.

2 THE COURT: I can only see six people on my screen.

3 Let me ask my courtroom deputy.

4 MR. WISSNER-GROSS: John, can we go to the unredacted
5 version.

6 THE COURT: There are 28 people on this.

7 A VOICE: Yes. I'll switch now.

8 THE COURT: So there may be a reporter here. Let's
9 see who is here present.

10 MR. WISSNER-GROSS: Let's see if anyone identifies
11 themselves who may be a reporter. Anyone other than counsel or
12 court personnel, if they can identify themselves, and if they
13 are on the call we ask that they drop off.

14 THE COURT: I see someone named Dan Kerns. Who is
15 that?

16 MR. WISSNER-GROSS: He is one of my colleagues.

17 THE COURT: Jessica Meyers.

18 MR. WISSNER-GROSS: Colleague.

19 THE COURT: OK.

20 MR. MOSKOWITZ: Sig, I am not aware of anybody else.

21 THE COURT: Someone just left. OK.

22 MR. WISSNER-GROSS: John, why don't you put it back
23 on. I think this will be helpful for your Honor to understand
24 what we are talking about.

25 So this is what we talked to you about on December

1 20th. We got documents from Voyager that confirm that for
2 everyone in red, nine of the 12 plaintiffs opened their
3 accounts and made the first deposits months, if not longer,
4 prior to the October 27, 2021 press conference.

5 So they allege reliance on Mr. Cuban and the Mavs.

6 We will come to Mr. Robertson in a moment, who alleges
7 that he opened his account based on the endorsement of
8 Mr. Cuban of Voyager before he opened this account in May of
9 2021, when in fact the first statement about Voyager didn't
10 occur until October.

11 So per the comment of Mr. Best, nine of the 12 are
12 out. They lied, frankly, in the complaint about having relied
13 on the Mavs and Mr. Cuban to open their account. But then we
14 have Rachel Gold and Sanford Gold, two Florida plaintiffs who
15 we will come to in a moment.

16 Let's go to the next page, next slide.

17 So this is something. We are talking about the lead
18 plaintiff Mr. Robertson. This is why in-person deposition is
19 so critical. He states in the complaint, and they quote from
20 him in paragraph 67, in the summer of '21 he claims that he saw
21 Mark, referring to Mr. Cuban, promoting Dogecoin and then
22 Voyager and thought he is a sound investor. "So I downloaded
23 the app and began to play around with a very small amount of
24 money in June 2021."

25 Why is that a fabrication? Well, Mr. Cuban didn't

1 announce his involvement or the Mavs involvement with Voyager
2 until October 2021 and Voyager first approached the Mavs in
3 August of 2021. False statement number one.

4 Number two, which we found out from Voyager, not from
5 Mr. Robertson, is that he had actually deposited \$30,000
6 between June and October into his account. So heavy investment
7 by him. Well, prior to the initial and only press conference
8 involving Voyager.

9 Let's go to the next slide.

10 THE COURT: So this is all very good evidence, and I
11 think this is evidence, obviously, you are going to provide to
12 the court in deciding the motion, but how is this relevant to
13 the discovery dispute?

14 MR. WISSNER-GROSS: We wanted Mr. Robertson to be
15 deposed in person in Miami. We noticed his deposition for
16 December 22nd. What was his response? He disappeared to
17 Illinois, they claim, unspecified hand surgery in the middle of
18 January. They said, well, we could make him available in Miami
19 sometime in February.

20 We want him next week, frankly. We have asked for
21 documentation of this purported hand surgery, which they never
22 provided.

23 Bear with me, your Honor. This, I think, will just
24 explain a little bit further.

25 Here is what we found with Mr. Robertson. In

1 September of 2021, he filed, under penalty of perjury, in two
2 state court cases, where he is proceeding *pro se*, seeking to be
3 relieved of having to make filing fees and he claims that he
4 has 130, 40 dollars of assets and no other assets. \$120 in
5 bank accounts, no other assets. We found from Voyager, not
6 from him, that he had \$30,000 of assets in his Voyager account.
7 Doesn't disclose it.

8 This goes to the document production that we have
9 gotten from him. He is claiming in his application to other
10 courts in September that he's been on disability since 2009,
11 has no income, and then, mysteriously, a year after he opens
12 his account, which he opened before Mr. Cuban even announced
13 anything about Voyager, he puts almost \$200,000 in April to
14 June, 2022 into his Voyager account.

15 We don't know if it is his money, someone else's
16 money. We have no idea. This is illustrative of the problem
17 we are having with the plaintiffs, who clearly in the complaint
18 allege they relied on Mr. Cuban to open the account. That's
19 false. We don't know if it's their money, someone else's
20 money, where it came from, whether they have other crypto
21 accounts, whether they have other advisors. None of this has
22 been given to us.

23 So Mr. Robertson, we want his deposition next week in
24 Miami. We understand why he fled the jurisdiction. This is
25 just based on our own personal investigation, not based on

1 anything that he's been very candid about sharing with us. So
2 we haven't gotten all his responsive documents. They should
3 have been produced in December.

4 Then Mr. Moskowitz has made a variety of objections,
5 which we think are meritless, like he won't give us information
6 about any other crypto accounts. Well, what we understand
7 about crypto is you sort of need that information to find out
8 if while he is trading in this account, he is trading in other
9 accounts. Or we haven't gotten any information on what's
10 called a wallet, which would give us information as to all
11 their crypto. We haven't gotten this for any of them.

12 So that's Mr. Robertson. That's emblematic of all the
13 plaintiffs. We had submitted, your Honor, a letter that we had
14 written to Mr. Moskowitz, including a chart, showing the
15 deficiencies of all the plaintiffs' production. He raced to
16 give us a few more documents last night, but all these issues
17 are still in play.

18 From our perspective there has been complete
19 noncompliance, complete noncompliance with the production order
20 you directed where he was supposed to produce all of these
21 documents. He's given us floating dates that we can depose
22 Mr. Robertson and if we want to come to Illinois. That's not
23 acceptable.

24 THE COURT: Right.

25 MR. WISSNER-GROSS: Let me go to the next one.

1 MR. MOSKOWITZ: Can we respond? We have been going
2 for about 20 minutes on this motion to dismiss hearing.

3 MR. WISSNER-GROSS: No, no. Let me finish. I will
4 finish the other two.

5 THE COURT: Excuse me.

6 MR. MOSKOWITZ: Try not to say in the jurisdiction.

7 THE COURT: Excuse me. Right now, Mr. Moskowitz, I am
8 just trying to hear about the depositions of the plaintiffs.
9 So I will give the defendants an opportunity to make their
10 presentation and then I will get to you, Mr. Moskowitz, so I
11 can hear what you have to say.

12 MR. WISSNER-GROSS: Thank you, your Honor.

13 Sanford Gold. We can be quick on Sanford Gold. His
14 daughter Rachel Gold is the third plaintiff. Now, both of them
15 claim to have opened their accounts months after the press
16 conference. So query whether there was any reliance at all
17 when they claim they relied on it when they opened it months
18 later.

19 By the way, none of these three plaintiffs got that
20 \$100 bonus that someone who opened, from the press conference,
21 to open it, etc.

22 THE COURT: Let's stay focused on deposing these
23 individuals.

24 MR. WISSNER-GROSS: So we need to depose him in
25 person.

1 THE COURT: OK.

2 MR. WISSNER-GROSS: A perfect example. We found out
3 from our investigation that Mr. Gold has been convicted three
4 times over three decades for major financial fraud. He's
5 served serious jail time. Not only financial fraud, he's been
6 involved with telemarketing, boiler room scams. He's been
7 involved -- he was required in 2006, for one of his criminal
8 enterprises, to pay restitution of \$18 million.

9 Go to the next page.

10 THE COURT: So you are concerned about his veracity
11 and you feel like you should --

12 MR. WISSNER-GROSS: I think we have a little bit of
13 concern about veracity.

14 THE COURT: Got it.

15 MR. WISSNER-GROSS: So he is a three-time convict
16 involved with schemes to embezzle consumers. We need to depose
17 this person in person in Miami. Frankly, he could be directed
18 to be deposed next week. There is no reason why not. We
19 should be able to do that.

20 Let's go to his daughter Rachel Gold.

21 This is one where I will borrow a phrase from my
22 friend Mr. Moskowitz. We were stunned, we were flabbergasted
23 to find out that, from an email on December 30th from
24 Mr. Moskowitz, that she didn't even open her account. In fact,
25 what he has claimed to us is it is her husband, Eric Rares, who

1 opened the account. According to Mr. Moskowitz,
2 notwithstanding the representations to the contrary in the
3 complaint, she didn't view the press conference. Somehow
4 Mr. Rares allegedly had seen a copy of it.

5 So by his own admission, and this goes to Mr. Best's
6 standing point, we have Mr. Moskowitz sort of conceding that
7 one of his Florida plaintiffs didn't rely on Mr. Cuban. She
8 actually relied on her husband for his investment decisions.

9 We have done our investigation, but we have no
10 documents, not adequate documents, in terms of trading history.

11 Now, they have said that she recently gave birth to a
12 second child.

13 Go back, John.

14 Can we depose her at her house? She needs to nurse.
15 We have offered to have one of my colleagues, Ms. Wolkinson is
16 prepared to go to her house.

17 THE COURT: Her house is here in the Southern District
18 of Florida?

19 MR. WISSNER-GROSS: In Coral Springs.

20 THE COURT: Coral Springs. OK.

21 MR. WISSNER-GROSS: By the way, we think that Sanford
22 Gold lives there too. I'm told it is less than an hour to
23 Miami. So no reason why Mr. Sanford Gold can't drive that one
24 hour down to Miami to be deposed in our local counsel's office.

25 We are prepared to work with her. Alternatively, we

1 could do it at a local office. Our local counsel has an office
2 in Fort Lauderdale, probably half an hour away. We are
3 prepared to depose her at her house. Let her take the breaks
4 she needs. Women only. We are prepared to do that.

5 Her husband, who they have offered up to be deposed,
6 he should be deposed in Miami. If he is the one who is the
7 real actor here who made all the decisions -- I would like to
8 accommodate her, but it just seems too complicated, with two
9 kids in the background, to depose the husband also. I think he
10 should make that one-hour trip to Miami.

11 So we need Mr. Robertson in Miami. We want him next
12 week. We want Mr. Gold in Miami. He can come next week.
13 Mr. Rares, we are willing to do him like the day after
14 Ms. Gold, but he should come to Miami.

15 Yes, have they given us proposed dates. Well, it is
16 sometime later in January and go to Illinois for Mr. Robertson
17 and depose him on the 26th or maybe in February. We think
18 these are perjured, bogus claims that all three of them have
19 asserted. If they are gone, the case goes.

20 THE COURT: OK.

21 MR. WISSNER-GROSS: So we understand why Mr. Moskowitz
22 is scurrying to try to bring in new people.

23 Mr. Moskowitz also offered me --

24 THE COURT: So let me hear the response from
25 Mr. Moskowitz. Thank you, Mr. Wissner-Gross.

1 MR. WISSNER-GROSS: All right.

2 THE COURT: So, Mr. Moskowitz, your plaintiffs have
3 filed an action here in Miami. Why can't they be deposed here
4 in Miami?

5 MR. MOSKOWITZ: They absolutely can, your Honor. I
6 mean, this is just incredible to hear these personal attacks on
7 these investors, that they fled the jurisdiction. I mean, just
8 complete lies, that they do all these horrible things.

9 THE COURT: So what are the dates?

10 MR. MOSKOWITZ: What we said, right after your Honor
11 ruled, we wrote them immediately after, here is a date for
12 every one of the plaintiff representatives, because they wanted
13 dates for those depositions. We gave them. We said we also
14 may add two additional ones. You know we can add until almost
15 trial for class reps. So here's two more.

16 They say, we don't want to hear about those two
17 others. We don't even want to hear about them. We're like,
18 OK, we're giving you an opportunity to depose them because we
19 want to be courteous and we may amend them. So there are four
20 people from Miami and we're making them available. So they
21 have a date for every deposition of every class rep.

22 The question for two was -- one went for hand surgery.
23 He's not fleeing the jurisdiction. Your Honor, I know that you
24 appreciate courtesy between counsel.

25 Please don't say he fled the jurisdiction, Sir. I

1 mean, that is just not right. It is just defamation.

2 THE COURT: Mr. Moskowitz, when can he be available in
3 Miami for deposition, Mr. Robertson?

4 MR. MOSKOWITZ: He needed two weeks to recuperate
5 where he was. So in three-and-a-half weeks, when he gets back,
6 he can be deposed here. That's all we said.

7 THE COURT: Did you give those dates? Have you given
8 those dates to opposing counsel?

9 MR. MOSKOWITZ: We will give them those dates. All
10 they keep saying is these guys are all defamatory and they're
11 all crooks and they're dropping their case. They're not
12 dropping their case.

13 The people that need to be deposed, we gave them
14 dates. One woman is pregnant and she is breastfeeding. She
15 does not want to go to Rachel's office. Rachel said, well, I
16 have a lot of people who have been breastfeeding who come to my
17 office. She doesn't feel comfortable breastfeeding her baby
18 during a deposition. That was it, your Honor. We don't think
19 that was so ridiculous to say a woman who is breastfeeding
20 would like to do it by Zoom.

21 THE COURT: OK.

22 MR. MOSKOWITZ: What is the emergency? There is no
23 allegation she is lying.

24 THE COURT: I think they're willing to come to her
25 home. So that shouldn't be a problem, correct?

1 MR. MOSKOWITZ: We can do it at her home.

2 THE COURT: OK.

3 MR. MOSKOWITZ: So we will make her available.

4 THE COURT: So do we have dates for those?

5 MR. MOSKOWITZ: We will send them dates in the next 30
6 days where they can depose Mr. Robertson and they can depose
7 Mr. Gold. We gave them dates for all of the others in January,
8 as your Honor ordered. There is no dispute here that we didn't
9 follow exactly what you said. Give them dates in January. We
10 did. And for two of the seven we said we want to do it by
11 Zoom. That was it. There is no fleeing the jurisdiction.

12 If they want to wait for Mr. Robertson's hand from
13 surgery for another two weeks, great. We told them that's
14 fine. If they want to now go to her house and do it in a
15 way least disturbing to someone who is feeding her baby, great,
16 we will do that too.

17 THE COURT: OK.

18 MR. MOSKOWITZ: So that's all. This isn't a motion to
19 dismiss hearing where we have to support all these horrible
20 attack-the-victim allegations. We have got hundreds of
21 clients.

22 Again, what we said before, your Honor, there is no
23 reliance in our claim. I don't know how many times we can tell
24 them that, but if these are unregistered --

25 THE COURT: Well, Mr. Moskowitz, I'm reading the

1 complaint and the complaint does allege reliance.

2 MR. MOSKOWITZ: These plaintiffs do say that they
3 relied on them.

4 THE COURT: OK.

5 MR. MOSKOWITZ: I'm telling you to prove the claim
6 that we are certifying it is not necessary. But they can ask
7 our clients anything they want in a full deposition. They have
8 their statements from the motion for class cert.

9 THE COURT: OK.

10 MR. MOSKOWITZ: They have everything about their
11 Voyager account. They have the subpoena from Voyager about
12 their account. What are they saying they don't have? Today is
13 discovery. It is not to try to show --

14 THE COURT: Well, I am glad that we resolved that.

15 Mr. Wissner-Gross.

16 MR. WISSNER-GROSS: Your Honor, two things. One, I
17 think we need to -- I think we get a feel for sort of one side
18 of Mr. Moskowitz. I think we need to lock in the dates today,
19 frankly. I think we need -- I haven't heard anything to
20 suggest that Mr. Gold or Mr. Robertson can't be deposed next
21 week, certainly for Mr. Gold. There is no reason why he can't
22 come to Miami and be deposed next week.

23 As to Mr. Robertson, I haven't gotten any -- I still
24 think he fled the jurisdiction because he knew we wanted to
25 depose him on the 22nd. We have shown you more than enough

1 evidence to raise questions on his credibility.

2 MR. BEST: Irrespective of that, what is wrong with
3 next week is the question.

4 THE COURT: OK. So today is January 6th. Mr. Gold
5 lives here in South Florida and Mr. Rares is here in South
6 Florida.

7 What dates are they available next week,
8 Mr. Moskowitz?

9 MR. MOSKOWITZ: We will have to check with them, your
10 Honor. We asked for them for dates in January and we gave them
11 dates in January.

12 THE COURT: Well, what were those dates that were
13 given? What were the dates?

14 MR. MOSKOWITZ: We gave them an email with dates for
15 every single plaintiff in January. Now if they want to do the
16 one who is breastfeeding in Miami, they can do it at her house.
17 Sure, we will try to work on a date.

18 MR. BOIES: We have offered to do that at her home,
19 your Honor.

20 THE COURT: Mr. Wissner-Gross, do you have the dates
21 for these four individuals within the month of January? What
22 do you have?

23 MR. WISSNER-GROSS: Well, I'm looking to see. I
24 thought they had proposed late January.

25 MR. BUSHMAN: January 23rd for Rachel Gold, Judge.

1 THE COURT: OK.

2 MR. BUSHMAN: January 24th for Sanford Gold.

3 THE COURT: OK.

4 MR. WISSNER-GROSS: Our point is --

5 MR. BUSHMAN: Pierce Robertson is not in the
6 jurisdiction.

7 THE COURT: And Eric Rares.

8 MR. BUSHMAN: The 26th. That's it.

9 MR. WISSNER-GROSS: We'd like your Honor to direct
10 Mr. Robertson return and be deposed next week. We think there
11 is strong evidence, strong evidence, that he filed a perjured
12 declaration.

13 MR. BEST: We could go to Chicago, too.

14 THE COURT: As I understand it, Mr. Moskowitz is
15 saying two weeks and he is available. So he is available the
16 week of the 23rd, correct, Mr. Moskowitz?

17 MR. MOSKOWITZ: Yes.

18 MR. WISSNER-GROSS: Who is available the 23rd, your
19 Honor?

20 THE COURT: Mr. Robertson will be in Miami on the week
21 of the 23rd.

22 MR. BUSHMAN: No, your Honor. This is Howard Bushman,
23 from the Moskowitz law firm. Good morning.

24 Mr. Robertson is having his surgery on January 17.

25 THE COURT: Oh, he hasn't even had the surgery yet.

1 MR. BUSHMAN: He is in Illinois doing preop
2 appointments and things like that. But he is having the
3 surgery on January 17th, and we offered to have his deposition
4 the week after in Illinois or he said he needed two weeks to
5 recover and then he could come back to Miami to have his
6 deposition taken, but Mr. Gross wanted all depositions
7 completed before January 13th. So the impasse occurred.

8 THE COURT: OK. He hasn't had the surgery yet, so he
9 could be in Miami next week.

10 MR. WISSNER-GROSS: That is what we are suggesting,
11 your Honor.

12 MR. BUSHMAN: I don't know the answer to that, your
13 Honor. I know he had doctor's appointments prior, but we could
14 check with him.

15 THE COURT: Otherwise, if it wasn't next week -- I'm
16 sorry. Mr. Boies.

17 MR. BOIES: I'm sorry. Go ahead, your Honor. You
18 probably had a solution.

19 THE COURT: So if he is not available next week, then
20 you're saying he is available the week of the 30th. Is that
21 what I understand, Mr. Bushman?

22 MR. BUSHMAN: We had offered him in Illinois after his
23 surgery or two weeks, he needed two weeks to recover. I have
24 not checked with him to see after that two-week period when he
25 could come to Miami, but I am sure it is short order after

1 that.

2 MR. BOIES: He can be available, your Honor, either
3 the week of the 23rd or 24th in Chicago or the week of the 31st
4 in Miami.

5 MR. WISSNER-GROSS: Your Honor, we are willing --

6 MR. BOIES: If I could just finish.

7 What we are talking about is whether these people are
8 deposed the week of the 23rd of January and the 30th, in one
9 case the 30th of January, or whether they are deposed the week
10 of -- I guess next week is the week of the 12th or something.

11 THE COURT: The 9th.

12 MR. BOIES: The 9th, week of the 9th.

13 I would respectfully suggest that given the dates that
14 we have agreed to that accommodate the defendants' depositions,
15 which go out much longer than this, it is not an unreasonable
16 accommodation -- we are giving them dates in January -- it is
17 not an unreasonable accommodation to have these for the weeks
18 that we have offered them dates for.

19 We will make them available. They can be deposed. If
20 there are any credibility issues, they will be fought out at
21 the deposition. I don't think that there is any need to, in
22 effect, just make it uncomfortable for these people to rush
23 them through when we are not doing that with anybody else.

24 MR. BEST: The whole case is being rushed through,
25 your Honor. The whole case is being rushed through.

1 There is literally no reason why, that we know of, why
2 Mr. Robertson can't make himself available this upcoming week,
3 and we'll go to Chicago.

4 THE COURT: So, Mr. Best -- oh, you will go to Chicago
5 now?

6 MR. BEST: Yes. We will be happy to go to Chicago
7 next week.

8 MR. BOIES: It should be a place --

9 THE COURT: I'm sorry. Wait. OK. Slow down.

10 A few minutes ago I heard he could only be deposed in
11 Miami, but now you're willing to go to Illinois. I just want
12 to be clear.

13 MR. WISSNER-GROSS: Our preference is Miami. We want
14 to take him next week. We don't believe any of the excuses
15 they're making, but we're prepared to go to Chicago.

16 THE COURT: OK.

17 MR. WISSNER-GROSS: We will pick the place and we will
18 pick the date.

19 THE COURT: Well, you can't pick the date if he has a
20 doctor's appointment. You will try to work with him on the
21 dates.

22 MR. WISSNER-GROSS: Yes, your Honor. We also would
23 like --

24 THE COURT: Is that, Mr. Boies -- hold on --
25 Mr. Boies, is he available in Chicago next week? Let's start

1 with that.

2 MR. BOIES: Your Honor, I think we ought to be able to
3 make him available in Chicago next week. I haven't personally
4 spoken to him. Mr. Bushman has. But if they want to fly to
5 Chicago to take his deposition two weeks before he is going to
6 be in Miami, fine.

7 THE COURT: That's fine. Right.

8 MR. BOIES: I frankly wouldn't want to go to Chicago
9 this time of year, but if that is what they want to do, we will
10 try to find --

11 THE COURT: I'm glad we resolved that.

12 MR. BOIES: We'll find a date next week. We'll find a
13 date next week.

14 THE COURT: So we have Mr. Robertson next week, and
15 then the week of the 23rd will be Mr. Sanford Gold, Ms. Rachel
16 Gold, and what about Eric Rares?

17 MR. WISSNER-GROSS: Your Honor, if we could, we'd like
18 to depose Sanford Gold and Rachel Gold's husband next week. We
19 can do that in Miami. There is no issue with that. We will do
20 it in Miami. They are less than an hour away.

21 THE COURT: So the issue with Ms. Rachel Gold is
22 you're saying you will do it at her home in Coral Springs.

23 MR. WISSNER-GROSS: Yes, we'll do it separately. We
24 will do that at her home, absolutely. We are prepared to do
25 that.

1 THE COURT: The question is whether she is available
2 next week at her home, the 9th.

3 MR. WISSNER-GROSS: No. It is fine. We will
4 accommodate. If it is the 23rd is what's proposed -- my
5 colleague Rachel Wolkinson will be taking that deposition. I
6 leave it to her to speak.

7 THE COURT: OK.

8 MR. WISSNER-GROSS: The 23rd is proposed. If that is
9 the date -- Rachel, if you could weigh in -- we can live with
10 it.

11 MS. WOLKINSON: I'm certainly available.

12 MR. BOIES: So we've got Rachel Gold for the 23rd at
13 her home.

14 THE COURT: Rachel Gold for the 23rd at her home.

15 Now you're talking about Sanford Gold. That's not her
16 husband, that's the father, correct?

17 MR. WISSNER-GROSS: That's the father.

18 THE COURT: The date given was January 24th, correct?

19 MR. WISSNER-GROSS: Right. We'd like it next week.

20 What we'd also like is we'd like an order directing
21 that the plaintiffs produce all remaining documents that we
22 have requested, which they really haven't done at all, and a
23 date certain from your Honor to complete that. So if they're
24 being deposed next week, we want all the documents at least 24
25 hours prior to deposition, certification, and --

1 THE COURT: Right. So that will be the next issue we
2 will talk about, the documents. That will be the next issue.
3 OK.

4 MR. BEST: On the 24th, your Honor, as you may know,
5 and certainly plaintiffs know, they scheduled Mr. Ehrlich's
6 deposition on the 25th in Connecticut.

7 THE COURT: Mr. Ehrlich.

8 MR. BEST: That is one reason why it would make sense
9 to have Mr. Gold's deposition next week.

10 THE COURT: I see. OK. Now I understand.

11 MR. BUSHMAN: Your Honor, this is Howard Bushman
12 again. We went through with the plaintiffs on the dates that
13 they were available. These were the dates that we were able to
14 get availability.

15 The defendants have four lawyers arguing in this
16 hearing. They can have one lawyer cover Mr. Ehrlich's
17 deposition and one lawyer take a deposition on January 24th of
18 Mr. Gold, who has offered to either come to Miami or what we
19 did offer is to allow, because Rachel Gold is married to Eric
20 Rares and Sanford Gold is the father, to have all the
21 depositions at Ms. Gold's house. I don't know how long the
22 defendants have proposed to take the deposition, whether they
23 need more than a few hours. We could double track them in one
24 day and then do another one the next day to keep the setup all
25 set up. But the 23rd and 24th were the dates that they were

1 available.

2 Respectfully, I ask that we keep those dates and also
3 allow us to complete our production of documents, which I know
4 your Honor will get to next and we can talk about that next.

5 THE COURT: OK.

6 MR. WISSNER-GROSS: We think that's wrong, your Honor.
7 We think for the reasons we have stated, and I have thought a
8 lot about it deeply, I think it is just not practical to depose
9 Sanford in his daughter's home with two kids under the age of 3
10 running around. The correct approach, it is less than an hour
11 to go to Miami. He is the plaintiff. He chose to become a
12 plaintiff. It is not inconvenient for him to come to Miami.
13 He actually might enjoy the break coming to Miami. And we
14 think we're entitled to depose him in person at our local
15 counsel's office.

16 The same with Eric Rares. We didn't know until
17 recently that Eric was the one who made all the decisions in
18 the account. They have offered him as a deponent. We will
19 take the offer. He also should be deposed in Miami. We can do
20 it next week.

21 THE COURT: And I don't think there's --

22 MR. BUSHMAN: Responding to Mr. Gross' statement about
23 Eric Rares, it is completely not true and false, but
24 irrespective, we did make him available for deposition along
25 with Ms. Gold on the same day. They could double track those

1 depositions and do one in the morning and one in the afternoon
2 after lunch, and we offered to prepare lunch and serve it to
3 them.

4 THE COURT: OK. I can understand, Mr. Bushman -- I
5 hear you -- but I can understand why they would want to have
6 the deposition in a law office or in a conference room where
7 there is more control over the environment. So it does make
8 sense. The only problem is the date.

9 So you are accommodating Rachel Gold at home. Sanford
10 Gold and Eric Rares, the question is what dates, and
11 accommodating them in Miami in a conference room environment
12 makes sense. So let's get some dates for that that will work
13 with defendants' schedule, defendants' attorneys' schedule.

14 MR. WISSNER-GROSS: Our proposal would be that they be
15 deposed towards the end of next week, simply because that will
16 give more time for the plaintiffs to complete their document
17 production.

18 THE COURT: OK.

19 MR. WISSNER-GROSS: We would propose, I think, the
20 12th or the 13th. We were agnostic as to which order it goes
21 in.

22 THE COURT: Well, let's see if that is possible.

23 MR. WISSNER-GROSS: We can do Sanford or Eric first
24 and --

25 THE COURT: The next thing we should talk about then

1 is the documents and what's missing with the plaintiffs'
2 document production.

3 MR. WISSNER-GROSS: Your Honor, in your view -- again,
4 we don't care whether it is Eric or Sanford on the 12th and
5 13th, but we would want one on the 12th and one on the 13th.
6 We don't know yet how long each will be.

7 MR. BUSHMAN: Your Honor, this is Howard Bushman. I
8 don't even know if they are available. Mr. Rares has a job. I
9 don't know if Mr. Gold is available. We gave them availability
10 dates. I will check.

11 If your Honor wants, we could have Sanford Gold on the
12 24th, the date that he said he was available in Miami live, and
13 I will check if Mr. Rares is available maybe on the 25th or
14 possibly on the same day, and they can both come to Miami and
15 we could do two depositions in the voluminous conference rooms
16 that the defendant has, but I don't want the defendant to be
17 able to just dictate, hey, we are going to do it on X day
18 because that is the day they want to do the deposition. It has
19 to be an availability.

20 We wanted to take Mark Cuban's deposition last month,
21 but he is not available. I just come out and say I want it
22 next week and your Honor is just going to say, oh, OK, let's do
23 it next week. This is not the way depositions work.

24 THE COURT: No, that is correct. Obviously you have
25 to check with their schedules to make sure that is going to be

1 appropriate. I'm sure you're willing to check.

2 MR. BUSHMAN: We will, your Honor.

3 THE COURT: If it can happen, it can. If it cannot,
4 then we will have to make different accommodations. Correct,
5 Mr. Wissner-Gross?

6 MR. WISSNER-GROSS: I'm sorry?

7 THE COURT: If he can, I hear counsel saying he will
8 contact his client and see if the 12th or the 13th is
9 appropriate for them. If it is not, then it is not. The dates
10 that they have given you is the 24th --

11 MR. WISSNER-GROSS: We're not aware, based on
12 investigation, we're not aware that Mr. Gold is working. He is
13 in his early 70s. He lives in his daughter's house.

14 THE COURT: He may have appointments.

15 MR. WISSNER-GROSS: We think that -- we haven't heard
16 any hospitalization issue. We have questions about any
17 explanations given to us. We think he is available.

18 THE COURT: Well, he may well be. He may well be.

19 Let me switch the topic to discussing now the
20 documents and let's see what that would require. That may help
21 us determine whether that deposition could occur the end of
22 next week or whether another week or so is necessary, because
23 it sounds to me, Mr. Wissner-Gross, that you want those
24 documents, you want a complete document production before the
25 deposition, and that would make sense.

1 MR. WISSNER-GROSS: We want to know they have produced
2 to us whatever they have.

3 THE COURT: What they have. So let's talk about that
4 first before we actually nail down these dates, now that we
5 have some options on dates.

6 MR. WISSNER-GROSS: Right.

7 THE COURT: Let's talk about that.

8 MR. BEST: Your Honor, this is Mr. Best. To that
9 point, your Honor, when we are getting into the question of
10 have they produced all that which the plaintiffs have, so you
11 understand, we are in a unique situation that Voyager account
12 information is on an app and is not like document based. You
13 can't get it from a third party. It has to be screenshotted
14 off their app.

15 We are talking a matter of seconds for the plaintiffs
16 to screenshot basic information about their account, i.e., when
17 they opened it. And when I say screenshot, it takes two
18 buttons on your phone, if it is an iPhone app, or if it is an
19 Android I think it is still two buttons, to screenshot it and
20 save the picture and then send it on.

21 We have not received any information from the
22 plaintiffs as to when these accounts were opened from the
23 plaintiffs or their trading activity or redemption activity,
24 which is critical to the standing piece.

25 MR. WISSNER-GROSS: Or to the extent we received any,

1 it is materially incomplete.

2 We did get from Voyager, which Mr. Moskowitz has or we
3 have made available to him by Voyager, a spreadsheet
4 summarizing, where Voyager had summarized all of their trading
5 activity. The case of Ms. Gold's didn't match up. So there
6 are discrepancies there.

7 If we can go to the -- your Honor, I don't know if you
8 have handy, there was a January 2nd letter I submitted or was
9 submitted to the court.

10 THE COURT: I have it.

11 MR. WISSNER-GROSS: That is Exhibit C, a chart
12 summarizing what we thought were the deficiencies that each
13 plaintiff, not just the Florida plaintiffs, but all of them.
14 You have that available, your Honor?

15 THE COURT: Yes, I do.

16 MR. WISSNER-GROSS: So that goes through detailing
17 what was missing and hadn't been produced, based on our quick
18 review of what was produced on the 28th.

19 John, I don't think we need to go to that.

20 You have that available?

21 THE COURT: I have it in front of me.

22 MR. WISSNER-GROSS: OK. That's fine.

23 John, we can go back to the PowerPoint.

24 THE COURT: Those are the documents. So let me hear
25 then from --

1 MR. WISSNER-GROSS: Let me just tell you at a high
2 level what I think we need.

3 THE COURT: OK.

4 MR. WISSNER-GROSS: I will use Mr. Robertson as an
5 example. That is why I refer that he represented in a court
6 proceeding he had no money in September 2021. If this guy is
7 claiming that he relied on Mark Cuban to open his account,
8 although he opened it months before the press conference, we
9 need to have all the information of the source of funding. We
10 think it is very likely that this wasn't even -- we don't know
11 if it is even his money. Some of it was cash that came in,
12 crypto came in. So we need to know the source of funding. We
13 haven't gotten that. It applies to all the plaintiffs.

14 We need to know if he had other crypto accounts.
15 Because the way this world operates, we need to have his
16 information, what is called the wallet information, that will
17 show us insight into all other crypto trading. That will be
18 relevant. If one of these plaintiffs was simultaneously
19 trading in another account with particular crypto that they
20 were doing here, that may impact questions of reliance on
21 Mr. Cuban, which we don't think there is.

22 We don't have the full picture for these people.
23 Where did the money come from, what the source was for the
24 money coming in, other crypto accounts, did they have other
25 brokerage accounts. We have heard that in the case of Ms. Gold

1 she relied on her husband. We don't know if any of these
2 other -- now we are talking more broadly of all, both
3 plaintiffs, we don't know if they had investment advisors. We
4 don't know any of that.

5 Now in terms of lawsuits, which impact their
6 credibility, we had to do our own investigation and found out
7 the prior bankruptcies by Mr. Robertson under a different name,
8 his 20 arrests, multiple court proceedings. Same thing for
9 Sanford Gold. There are other plaintiffs in the case who have
10 very, very serious, at least one has a very, very serious
11 several-page criminal history. That alone impacts credibility.

12 For now what we are focusing on is we want all the
13 documents as soon as possible of the Florida plaintiffs so we
14 can prepare for their depositions. We have gotten some from
15 them. Mr. Moskowitz has objected to the relevancy of other
16 crypto accounts, other brokerage accounts, anyone else they
17 rely on. I don't know whether he is still insisting on that
18 objection.

19 Other than a claim of privilege, we think we should
20 get the full years of what they have, and if they don't have
21 it, just tell us they don't have it reasonably in advance of
22 their deposition. I have said 24 hours before, but if we
23 depose them Thursday and Friday, as long as I have all of their
24 documents, let's say, noon next Wednesday, with a certification
25 as to the Florida plaintiffs, we don't have anything else other

1 than what we've given you, we can go forward. That's fine.

2 THE COURT: OK. So let me hear from the plaintiffs'
3 side on that. Who will be addressing that?

4 MR. MOSKOWITZ: Thank you, your Honor. I will speak
5 first and then Mr. Bushman can add in.

6 We immediately, after your Honor's last ruling,
7 because that was the first time our plaintiffs' documents were
8 due. Again, I'm going to talk about for five months we have
9 been trying to get documents from Mr. Cuban about his account,
10 etc. We got nothing. But we said to them, we will give you
11 dates for each of the depositions and we will give you all of
12 their documents regarding their Voyager account.

13 What did they do? They went to Voyager, because they
14 are aligned with them, and they were able to get every document
15 regarding our accounts at Voyager. They also had these
16 declarations that our clients filed prior, when we moved for
17 class certification. So anything that relates to anything from
18 the Voyager account -- did I use the bonus, what did I see of
19 Mr. Cuban -- all of that will be produced to them, we said,
20 period. There's no resistance. There is no delay. They just
21 asked for it. We said, we are producing it all, you will get
22 everything about their Voyager account. So that was clear.

23 I just need to state one other thing. The only two
24 depositions that we have been waiting for for three months are
25 the two Mavericks employees. Your Honor said to Mr. Boies at

1 the last conference, you can get those depositions in January
2 before the plaintiffs are deposed because you've been waiting
3 for five months for depositions. So I know we are going to get
4 to them, but Mr. Mackey and Mr. Tapply, these are the
5 communications directors at the Mavericks. We don't have a
6 date for them in January, and that's when Mr. Boies said, your
7 Honor, we would like to have their dates before we give the
8 plaintiffs because they just asked for the plaintiffs after
9 they denied the motion to stay. We have been asking for these
10 people with personal knowledge for three months. Your Honor
11 ruled -- I have the quote. You said: Yes, you will give it to
12 them in January.

13 So I'm happy to give all these plaintiff deposition
14 dates, but we have been asking for just two depositions of the
15 Mavericks, Mr. Tapply and Mr. Mackey, because they were
16 identified as having personal knowledge. We just want the same
17 standards to apply to them. We want their documents and we
18 want their depositions in January before these plaintiffs.

19 In terms of our plaintiffs, we're not hiding anything.
20 Anything about the Voyager account, about what they saw about
21 Mark Cuban, about what they relied upon, we are going to give it
22 to them and they can ask any and all questions about it.

23 THE COURT: OK. When will you be producing those
24 documents?

25 MR. MOSKOWITZ: Howie, you have a better idea.

1 MR. BUSHMAN: Your Honor, there is what the defendants
2 are telling you they want now and what they asked for in
3 discovery, right. So when you ask for all documents regarding
4 all communications regarding Voyager, right, we have to then
5 search emails, search text messages, which we did. We hired an
6 eDiscovery vendor to do that, pull all of that information and
7 put that on a system, which I believe everything has been
8 uploaded to that system today. There were thousands of hits
9 for that. So now we have to go through that because if
10 somebody was, for example, a Star Trek Voyager fan, all of
11 that will come up. So we are going to go through those
12 documents.

13 We should be able to make a full production next week.
14 It should be able to go through the documents in short order.

15 MR. BEST: To be clear --

16 MR. BUSHMAN: The real rub that, I think -- I'm sorry.
17 I was interrupted by Mr. Best again.

18 THE COURT: Mr. Best, I'm listening to Mr. Bushman.
19 Go ahead.

20 MR. BUSHMAN: The other thing that we did is we also
21 produced screenshots of the Voyager app, which showed when they
22 made their initial deposit. I am not 100 percent clear sitting
23 here today we did that for every plaintiff, but certainly we
24 will, and we can do that by next week as well. I believe we
25 have done it for all the Florida reps, absolutely.

I think the real rub goes to the fishing expedition that defendants want to do as to every plaintiff's financials. They want to look at other crypto accounts, other banking institutions and things like that, which we think goes well beyond anything relevant in this particular case.

I mean, for example, they talk about efficiency as it relates to Mr. Cuban. What if we wanted every marketing agreement that Mr. Cuban and the Mavericks ever entered into to see what kind of due diligence they did on those types of accounts and then we show that they didn't do any due diligence here for this Voyager account. It doesn't make sense.

They either looked at Voyager and they made a deposit in Voyager, it came from their bank account, that's fine. To go beyond that, what are they looking at in other crypto accounts, what are they looking at on the Blockchain, what are they looking at in other investment accounts in other brokerage firms. All of this spirals into just madness of the relevant information, when the only thing that matters here is Voyager.

They are going to tell you, Judge, that every allegation we have and every piece of discovery we have as it relates to Mr. Cuban has to be Voyager related. They can't then come back and say, well, we want everything under the sun regarding every plaintiff's financials, which is what their discovery requests ask for. That just doesn't make any sense.

Nor have they provided us with any type of case law or

1 cases that show that when you make an allegation of purchasing
2 an unregistered security that somehow you're entitled to, the
3 defendant is entitled to get your entire financial background
4 from a particular plaintiff who filed a case. They haven't
5 done that.

6 So what I would respectfully suggest is that we
7 deliver to them all of the Voyager confirmation. If they want
8 to ask questions at the deposition about where did the money
9 come from, what did you do with it, and they will answer those
10 questions because I can't make a relevancy objection at a
11 deposition, or I can but I can't instruct them not to answer.
12 If they have further questions and want further documents, they
13 can seek those.

14 At this stage it is a complete fishing expedition. It
15 is beyond anything I have ever seen in any case I have ever
16 done relating to a plaintiffs' discovery, to ask for literally
17 their entire financial background and history for the temerity
18 to bring a lawsuit against our client.

19 MR. WISSNER-GROSS: Your Honor, can I briefly respond?

20 THE COURT: So I hear you saying, Mr. Bushman, that
21 you're willing to produce all documents that would relate to
22 any of your clients' investments in Voyager.

23 MR. BUSHMAN: Correct.

24 THE COURT: And related to Voyager platform, the
25 information that they may have received with respect or from

1 Voyager.

2 The personal financial information, are you including
3 in that, for instance -- I just want to make sure I
4 understand -- documents relating to any investment accounts
5 with any brokerage firm person or entity? You're objecting to
6 that?

7 MR. BUSHMAN: Yes, your Honor.

8 THE COURT: Source of funds. Are you objecting to
9 that?

10 MR. BUSHMAN: When you do a screenshot, it shows that
11 the deposit was made from a checking, from their checking
12 account or whatever bank account it was. So it is in the app.

13 THE COURT: The source of funds is in the app.

14 MR. BUSHMAN: Yes.

15 THE COURT: So you're talking about documents related
16 to other investments and other investment accounts. Let me
17 make sure I understand.

18 MR. WISSNER-GROSS: Request --

19 THE COURT: Documents relating to third-party advice
20 with respect to Voyager. Any objection to that?

21 MR. BUSHMAN: I couldn't hear you. Mr. Gross started
22 speaking while you were speaking, your Honor, so I couldn't
23 hear you.

24 MR. WISSNER-GROSS: Apologize.

25 THE COURT: Documents relating to third-party advice

1 with respect to Voyager or other crypto investments.

2 MR. BUSHMAN: No. With respect to Voyager, we will
3 produce. With respect to other crypto investments, what does
4 it matter if somebody invested in some other crypto asset and
5 got advice to invest in that other crypto asset if it doesn't
6 relate to Voyager. If it relates to Voyager, we will produce
7 it, including text messages, emails, and, of course, they are
8 going to sit for a deposition and talk about it.

9 Other investment and other investment firms and
10 brokerage accounts is completely irrelevant. It is really
11 harassing --

12 THE COURT: OK.

13 MR. BUSHMAN: -- and par for the course in this case.

14 THE COURT: I just want to make sure we are clear on
15 all your objections.

16 No prior criminal history or involvement in
17 litigation. What about that?

18 MR. BUSHMAN: Typically, that would be more of an
19 interrogatory, but we are pulling the documents that we have
20 access to and we will produce them.

21 THE COURT: With regard to criminal history and
22 involvement in other litigation. OK.

23 MR. BUSHMAN: I believe we had an objection, your
24 Honor, as to temporalness as far as something longer than, say,
25 10 years ago or 15 years ago, but we will produce what's

1 relevant and what is in our possession --

2 THE COURT: OK.

3 MR. BUSHMAN: -- as best as we can.

4 THE COURT: All right. So it comes down to other
5 crypto investments and other documents relating to other
6 investments, but other than that you're willing to produce.

7 MR. BUSHMAN: Yes. Yes, your Honor.

8 I want to make clear, just because the defendants were
9 able to find information on the internet about our particular
10 clients as far as their past criminal history or what have you
11 doesn't mean they have documents in their possession regarding
12 that particular event that might have occurred 10, 15, 20 years
13 ago, but we'll search to see if they have actual documents in
14 their possession. That's why I said it was probably better
15 suited for an interrogatory, where they would ask you
16 questions -- have you ever been convicted of a felony over the
17 last ten years -- and we would answer it as best that we can.

18 THE COURT: OK.

19 MR. BUSHMAN: I can't sit here today saying somebody
20 has a file about some criminal conviction from a decade ago or
21 longer.

22 THE COURT: All right. I think I understand you.
23 Then your ability to, the timing in which you would provide
24 those documents, what's the holdup? How long will that take?

25 MR. BUSHMAN: There really isn't a holdup, your Honor.

1 It was a situation where we wanted to make sure we made a
2 thorough production.

3 We had an eDiscovery vendor go in and pull the emails
4 and pull the text messages and then they upload it to their
5 software, their Relativity software, and then we are able to
6 review it and produce it in an orderly fashion. Also so that
7 the defendants can search and use it in a way that they feel is
8 necessary, as I've had in every discovery production.

9 We got everything uploaded. We, I believe, are
10 starting to review it today. By next week we should be able to
11 produce. By Thursday probably, maybe earlier.

12 THE COURT: Next week Thursday?

13 MR. BUSHMAN: We can try on a rolling basis to produce
14 documents, and we have made two productions already. Whether
15 the defendants like to mischaracterize it as scurrying or
16 whatever, but we are producing as we get and we are producing
17 more.

18 THE COURT: OK. You believe you will have it all
19 produced by the end of next week.

20 MR. BUSHMAN: Yes, your Honor.

21 THE COURT: I didn't catch the date. You said the
22 Thursday?

23 MR. BUSHMAN: I said Thursday, but if you want to give
24 us until the 13th and then that will give them a week to review
25 the documents before the depositions start on the 23rd.

1 THE COURT: OK.

2 MR. WISSNER-GROSS: We were hoping to take some
3 depositions next week, your Honor.

4 THE COURT: I understand.

5 All right. So, Mr. Wissner-Gross, we have had a
6 thorough discussion now on what they are able to produce, why
7 they're taking some time, because they need to make sure that
8 they review all of the documents before they give them to you.
9 Where are we now?

10 MR. WISSNER-GROSS: Well, I still would like for the
11 Florida plaintiffs -- I'm happy to prioritize to get the
12 Florida plaintiffs first in the interest of efficiency. It
13 sounds like from Mr. Bushman that Thursday was possible. If he
14 gets it to us by end of business Wednesday, we could still do
15 depositions on Thursday and Friday.

16 THE COURT: Assuming the individuals are available,
17 but those were not the dates that they have given you.

18 MR. WISSNER-GROSS: Yes. As I said, Sanford Gold
19 doesn't seem to be working. I think we should have --

20 THE COURT: We can't say what his availability is if
21 he is not there.

22 MR. WISSNER-GROSS: OK. OK.

23 MR. BUSHMAN: Your Honor, we would try our best, and
24 we always try our best.

25 I don't appreciate the defense counsel's

1 characterization of the plaintiffs filed a lawsuit and
2 therefore they must be available at any minute on any whim. We
3 will make them available as we can make them available. I have
4 no idea if they are available next week.

5 They served discovery on all of the plaintiffs. So we
6 did a collection for all of the plaintiffs, not just the three
7 Florida plaintiffs. If they did discovery as to just those
8 three Florida plaintiffs, we probably would have had production
9 done already, but they did everybody. So we pulled everybody
10 and we are uploading everybody. We are uploading more and more
11 as we go. This was not an easy process to do so, but we wanted
12 to be sure --

13 THE COURT: I hear that.

14 MR. BUSHMAN: -- we wanted to make sure we did it one
15 time and not piecemeal.

16 What I would say is production by next Friday
17 definitely, and then I can work on Mr. Gold for the following
18 week, though the 24th is the one he said he was definitely
19 available. I know he helps care for Ms. Gold's children from
20 time to time. So I have to make sure that all gets taken care
21 of.

22 Mr. Rares, who is the other deponent, I doubt he is
23 going to have much information. It was Ms. Gold, contrary to
24 Mr. Gross' mischaracterization here at the hearing, it was
25 Ms. Gold that chiefly was responsible for the investing. So

1 Mr. Rares will probably be a very short deposition, but we will
2 try and make him available. We will check his availability. I
3 will try and work with Mr. Gross off line, as I work with all
4 my defense counsel, to get a date. This isn't something we
5 should be bothering your Honor with. We will try and get it,
6 be big boys and big girls and get it taken care of.

7 MR. WISSNER-GROSS: Your Honor, if they can get --

8 MR. BEST: Sir, let me take over.

9 MR. WISSNER-GROSS: OK.

10 MR. BEST: OK. I'm OK with defense's position on
11 their production save one thing, your Honor. Again, as I
12 explained to you, it takes less than five minutes to screenshot
13 your activity up from your account and send it to us, despite
14 the fact that they were obligated to provide that to us to date
15 and have, in fact, made a production of other screenshots, they
16 have not done that. So I want to get off this idea and the
17 rouse that their production is so voluminous. If we can
18 prioritize it and they can get us the basic screenshot
19 information and essential screenshot information of their
20 Florida-based clients' accounts at Voyager, that would satisfy
21 our needs.

22 Secondly, as regards their financial information, it
23 is critical to know how they funded their accounts because you
24 can only open up an account at Voyager either through a cash
25 deposit or a crypto deposit, and if it is in crypto, that means

1 that they are well versed in the universe of cryptocurrency,
2 have established accounts before, and have been trading
3 cryptocurrency prior to their opening of the Voyager account.
4 So it is extraordinarily relevant for this litigation.

5 THE COURT: OK.

6 MR. BEST: Thank you.

7 THE COURT: All right. So I hear two things there.
8 You would like to prioritize the screenshots from the Florida
9 individuals.

10 Is that something that you can do, Mr. Bushman?

11 MR. BUSHMAN: I believe we have produced the
12 screenshots. If Mr. Best --

13 THE COURT: OK.

14 MR. BUSHMAN: Maybe it is better off line he can show
15 me an example of the screenshot he wants.

16 I believe we produced screenshots showing the first
17 investment, showing the deposit, showing the trading going on,
18 but if there is some other screenshots that he wants -- I mean,
19 technically we would have to screenshot every piece and page of
20 the Voyager app, which would be probably thousands of different
21 machinations, in order to fully comply with their discovery
22 request.

23 So I will get with Mr. Best after this call --

24 MR. BEST: It's their trading activity.

25 MR. BUSHMAN: -- he can show me exactly -- I'm sorry.

1 I don't like to be interrupted, Mr. Best.

2 He can show me exactly what he wants. Maybe we are
3 miscommunicating or maybe it is just I produced it for some and
4 not all, and I will be happy to do that today, your Honor. I
5 will get with Mr. Best and we will figure it out.

6 THE COURT: Thank you, Mr. Bushman.

7 Mr. Best, can you hold off a moment, please.

8 MR. BEST: It is as basic as --

9 THE COURT: Mr. Best, Mr. Best, I am going to have to
10 ask you to hold off for just a moment so I can finish hearing
11 what Mr. Bushman has to say and ask him one more question.
12 Thank you.

13 So you are going to meet with or discuss with Mr. Best
14 later what he needs from these trading apps from the Voyager
15 trading app, and I think that that will be helpful, so you can
16 then make the Florida individuals a priority.

17 I want to point out something in Exhibit C that I have
18 here, which is the chart for Mr. Swissner-Gross -- it's
19 actually Wissner-Gross. Sigmund. Got it. Wissner-Gross -- is
20 that there isn't anything here about Eric Rares.

21 MR. WISSNER-GROSS: That is because he is not a named
22 plaintiff and he is the husband --

23 THE COURT: Got it.

24 MR. WISSNER-GROSS: -- of Rachel Gold.

25 THE COURT: So everything that is Rachel Gold. OK. I

1 understand.

2 MR. WISSNER-GROSS: They just told us recently that he
3 is the one who made the trading decisions.

4 THE COURT: OK.

5 MR. BUSHMAN: Not true, your Honor. He keeps saying
6 that. I have told him multiple times -- I have said it
7 multiple times it is not true. Ms. Gold made the trading
8 decisions. She used marital funds to fund the account and sign
9 up the account but sign up the account in her husband's name.

10 THE COURT: OK.

11 MR. BUSHMAN: She clearly has standing under Eleventh
12 Circuit and Southern District of Florida case law on that
13 particular issue.

14 THE COURT: OK.

15 MR. BUSHMAN: We decided to make Mr. Rares available
16 for deposition in case they had questions. He will have very
17 limited knowledge.

18 THE COURT: I see.

19 MR. BUSHMAN: We are going to make him available for
20 deposition.

21 MR. BEST: Your Honor --

22 THE COURT: I guess the thing is, yes, so if Mr. Rares
23 is not even a plaintiff, how is it that he is being deposed in
24 this case?

25 MR. BUSHMAN: Well, we made him available, your

1 Honor --

2 MR. BEST: Your Honor --

3 MR. BUSHMAN: -- because it was his --

4 THE COURT: Excuse me. I'm asking Mr. Bushman.

5 MR. BUSHMAN: I'm sorry. I can't --

6 THE COURT: I'm trying to ask Mr. Bushman.

7 MR. BUSHMAN: One person at a time, please.

8 We made him available for deposition in case we were
9 going to potentially add him as a class representative.

10 THE COURT: I see.

11 MR. BUSHMAN: Because it was his account, even though
12 Ms. Gold made all of the decisions for that account and,
13 frankly, made all the decisions for Mr. Sanford Gold's account
14 as well.

15 THE COURT: I understand.

16 MR. BUSHMAN: As they will find out in testimony.

17 THE COURT: OK. All right. Thank you very much.

18 Mr. Best. So then your other concern was that the
19 crypto --

20 MR. BEST: If I may just respond to that. Your Honor,
21 so you know, the reason why this all came to light is because
22 Mr. Moskowitz told us in an email that Rachel Gold was a
23 nominee account and did no trading activity and it was all her
24 husband who opened the account and traded in it and offered him
25 up as a deponent.

1 THE COURT: OK.

2 MR. BEST: I have no idea how to respond to what we
3 are just hearing now, but that is -- literally, I can read you
4 the email or we can find it in the next two minutes and read
5 you the email that Mr. Moskowitz sent to us.

6 THE COURT: It is OK, Mr. Best. We have limited time
7 and I don't want to go any further with that. Since the
8 plaintiffs are offering this gentleman up for deposition, I
9 think we don't really need to go any further. All that will be
10 revealed during the deposition and as you get more evidence in
11 the case.

12 I want to talk to you about what your Kerns were with
13 the objections. I think that is really much more relevant or
14 pressing, is that the information regarding crypto investments.
15 I hear an argument that, Mr. Bushman, that the plaintiffs other
16 cryptocurrency investments is relevant to show, I'm assuming,
17 their level of sophistication in this type of market. How do
18 you address that?

19 MR. BUSHMAN: First, their level of sophistication is
20 irrelevant to the claims at issue. Number two, your Honor,
21 whether or not they traded in crypto and then moved their
22 assets to Voyager, the reason why they moved their assets to
23 Voyager will be produced. It is whether or not they invested
24 in some other crypto company and, to be honest with you, I
25 don't really understand crypto as well as some. I could throw

1 out names like Blockchain and all this other stuff, but whether
2 or not they invested in company A and put money in company A
3 has nothing to do with whether or not and what they did --

4 THE COURT: On their reliance upon --

5 MR. BUSHMAN: -- to put their money into Voyager.

6 THE COURT: On their reliance upon Mr. Cuban. OK.

7 MR. BUSHMAN: Correct. Correct. I mean, if they had
8 some sort of reliance upon Mr. Cuban, then they relied upon
9 Mr. Cuban and that will be produced. If they invested in X
10 other company and that company is still active and moving and
11 going and they have money in that account, the defendants don't
12 have a right to go on a fishing expedition to get every
13 financial document that these plaintiffs have, and that is what
14 they have asked for, your Honor.

15 You have to look at their request. Their request is
16 basically everything and anything. If they want to amend their
17 request and send us over another request that is much more
18 tailored to what money they put into a Voyager account or where
19 that money came from from a Voyager account, which we are
20 producing anyway, but if they want to be more specific, I'm
21 happy to deal with that.

22 It is way overbroad. It is crazy overbroad. I have
23 never -- nobody would ever file a lawsuit against a particular
24 company if they had to produce all information regarding their
25 entire financial background in order to allow the case to go

1 forward. It is extraordinarily overbroad, beyond anything
2 that's in the realm.

3 THE COURT: I agree with you that it is overbroad to
4 ask about all other investments. As far as cryptocurrency
5 investments, if they are asking simply where the cryptocurrency
6 came from for them to make the trade into Voyager, I do think
7 that would be relevant for purposes of showing that they do
8 have some sophistication in the cryptocurrency market and they
9 were moving from one cryptocurrency market or platform,
10 essentially, to another.

11 MR. MOSKOWITZ: Your Honor, I think I have --

12 MR. BUSHMAN: We will agree to produce.

13 MR. MOSKOWITZ: I think I have a resolution.

14 MR. BUSHMAN: We will agree to produce --

15 THE COURT: I'm sorry. I am getting two different
16 people speaking at the same time.

17 Mr. Bushman or Mr. Moskowitz --

18 MR. BUSHMAN: I defer to Mr. Moskowitz.

19 THE COURT: -- you're on the same side.

20 Mr. Moskowitz.

21 MR. MOSKOWITZ: I'm trying to help my friend out.

22 I think we can make this easier, Judge, because we
23 hear you. They can ask in the deposition whatever they want.
24 Let's just make it clear. Anything they want to ask in their
25 deposition, they can ask. If they want to ask where the money

1 came, if they want to ask how many crypto did you invest in,
2 that's one thing.

3 What Howard is talking about is what is their duty to
4 go back and find documents. So I think if they really have an
5 interest, which isn't relevant to the claim, but if they want
6 to spend their time in their deposition asking them about their
7 prior history or did they invest in crypto, I say we let them.
8 I say that's fine. But what we are talking about now is we
9 want to make sure that we have complied with our obligations to
10 provide the documents that they have within their possession --

11 THE COURT: I understand.

12 MR. MOSKOWITZ: -- and I think everything about
13 Voyager for a mom-and-pop investor, that's hard to do.

14 We hired an ESI company and they're going through
15 texts and they're going through their databases. They don't
16 know how to do it themselves. So we are getting them all.

17 I think the fair compromise, extremely fair, is you go
18 at it, whatever you want to ask them, you go at it if it
19 relates to their investment. If you want to go on a fishing
20 expedition for seven hours, go do it.

21 THE COURT: Well, I think what we are talking about,
22 as I see in deficiencies here, Mr. Moskowitz, according to
23 defendants, is they didn't receive any documents identifying
24 the source of funds for any transfers into the account, into
25 the Voyager account.

1 MR. BEST: Correct.

2 THE COURT: So they are looking for documents
3 identifying the source funds for transfers into the Voyager
4 account. I do think that is a reasonable request.

5 MR. MOSKOWITZ: Absolutely, your Honor.

6 THE COURT: OK.

7 MR. MOSKOWITZ: I think Mr. Bushman said anything that
8 relates to the Voyager trading, such as where did that money
9 come from, that should be there. I agree.

10 THE COURT: OK.

11 MR. MOSKOWITZ: We don't disagree that anything about
12 the Voyager trades, where did that money come from, where did
13 that money go, I think that is all fair game.

14 THE COURT: All right. Thank you.

15 MR. BUSHMAN: I believe we produced it, your Honor,
16 for at least most, if not all, of the plaintiffs. It says
17 where did it come from. Checking account. So it didn't come
18 from a crypto firm. It came from a checking account.

19 THE COURT: I see.

20 MR. BUSHMAN: Do they want the account number, the
21 bank, the routing number, maybe some blank checks?

22 THE COURT: Then they will have to be more specific.

23 MR. BUSHMAN: If it comes from a crypto firm, it will
24 say it there. If it doesn't say it, we will go find it.

25 THE COURT: OK.

1 MR. WISSNER-GROSS: Your Honor, could we --

2 MR. BEST: For instance, Robertson funded his Voyager
3 account with cryptocurrency. We have no information from the
4 plaintiffs as to the source of funds.

5 MR. WISSNER-GROSS: We don't know if it is his
6 crypto --

7 MR. MOSKOWITZ: Ask him. You are going to depose him
8 for seven hours.

9 MR. WISSNER-GROSS: This is a little bit
10 unfortunate --

11 MR. BEST: With all due respect, I am speaking to the
12 court.

13 THE COURT: Sorry. Sorry. Sorry.

14 MR. WISSNER-GROSS: Excuse me. This is --

15 THE COURT: One person at a time. One person at a
16 time.

17 MR. WISSNER-GROSS: This is a double standard.

18 THE COURT: It is not possible for me to handle that.
19 OK.

20 MR. WISSNER-GROSS: Your Honor --

21 THE COURT: So what I am hearing is that you want more
22 information. You will have the information with regard to
23 where the money came from, the source, and that's what you are
24 asking for here on your document request. If you need further
25 information, you can get that through the deposition, and

1 that's fine.

2 MR. WISSNER-GROSS: Your Honor, with respect to
3 Mr. Robertson, we just have a specific concern.

4 THE COURT: And you will be able to address those.

5 MR. WISSNER-GROSS: The money in the account may not
6 be his. He is claiming damages. We have no idea if he is
7 trading other people's money. We have no idea.

8 THE COURT: All right.

9 MR. WISSNER-GROSS: And there is a fact pattern there
10 that really, going into a deposition, has red flags all over
11 it. So knowing the source and if he -- again, if people have
12 other crypto accounts and they are actively trading in other
13 crypto accounts -- with these accounts, you open an account and
14 then you are buying and selling crypto. If they are actively
15 engaging in a similar pattern in other accounts, in other
16 crypto accounts --

17 MR. BUSHMAN: And let me --

18 THE COURT: That sounds like something you might want
19 to file a motion on and I can take a look at if there is
20 something specific --

21 MR. BUSHMAN: Right. Your Honor, the defendant should
22 be very --

23 THE COURT: -- but I am not hearing in enough specific
24 argument right now to be able to rule on that issue.

25 MR. BUSHMAN: Correct. Your Honor, the defendant

1 should be very careful what they wish for because Mark Cuban
2 said he was all in, he was a Voyager investor, he put his money
3 in, blah, blah, blah. Are we entitled to compare his crypto,
4 all of his crypto investments across all of his crypto
5 platforms to see if he truly was all in with Voyager or whether
6 he just had a nominal investment compared to all of his other
7 ones.

8 So we have to make sure that we keep our eye on the
9 ball. We have to make sure we keep ourself very, very narrow,
10 or else once we start to splinter, what is good for the goose
11 is good for the gander, and then we will start asking for a
12 whole bunch more stuff as it relates to Mr. Cuban.

13 MR. MOSKOWITZ: Well, Mr. Bushman, clearly whatever
14 ruling we get --

15 MR. BUSHMAN: There is the eye on the ball.

16 MR. MOSKOWITZ: Whatever ruling we get about what
17 account information is required, of course it is going to
18 require to Mr. Cuban's account. If we have to tell you every
19 plaintiff's money that came in, where did it go, why wouldn't
20 that apply to Mr. Cuban?

21 MR. WISSNER-GROSS: Because your clients are the ones
22 that are alleged are lying.

23 THE COURT: OK. Thank you, counsel. I am going to
24 have to ask that everybody stop for a moment. We have only
25 about ten minutes left and I have one more issue that we want

1 to address.

2 MR. BEST: If I may on this last point, your Honor.

3 This is Stephen Best.

4 It is as easy as this. Is Mr. Robertson funding his
5 Voyager account in his name with his money or with other
6 people's money?

7 The reason why that is important is because at about
8 the same time he was noting in court filings his indigency
9 status, we have reason to believe that he may have been funding
10 his account with other people's money, which goes to his
11 standing, because of course we have to believe that he is not
12 going to make a fraudulent filing in another court of Florida,
13 at the same time he is funding his crypto account with \$30,000.
14 That is a very relevant issue, and that is one of the reasons
15 I'm bringing it up in its simplest form, we would like to get
16 clarity on.

17 THE COURT: Thank you.

18 Let's move on to the final topic that we can discuss
19 today, which would be the depositions of Mr. Mackey and
20 Mr. Tapply. These are individuals from the basketball, the
21 Mavericks.

22 MR. MOSKOWITZ: Yes, your Honor. We asked in an
23 interrogatory --

24 THE COURT: Have dates been presented to the
25 plaintiffs with regard to their depositions?

1 MR. MOSKOWITZ: So we have asked in an interrogatory
2 who has personal knowledge about the Voyager/Mavericks contract
3 and about the press conference. Who planned it? How did you
4 target the people? What were the education that you were going
5 to provide to the different people? We know it reached
6 Florida, but those are things that we can contest later. We
7 need the discovery.

8 So Mr. Boies raised the issue last week in the hearing
9 and he said, if we are going to set any of the plaintiff's
10 depositions, which are brand new because those weren't sought
11 until after the motion to stay, we could at least take some of
12 the Maverick depositions. You are letting Mr. Cuban go 90 days
13 away, but how about Mr. Mackey and Mr. Tapply, because they're
14 the communications directors. Your Honor said, I see no reason
15 why you can't depose them in January. Mr. Boies said, thank
16 you very much for that ruling, your Honor.

17 So they were supposed to go before any of these
18 plaintiffs, because they're not Mr. Cuban, they're not
19 billionaires. We have been asking them for a couple of months.
20 Your Honor ended the ruling with, I see no reason they
21 shouldn't be produced in January.

22 So we followed up and asked them in a meet and confer,
23 and their response was, we don't have any dates for you for
24 either of them in January, period. We said, please, reconsider
25 that before we have to go back to Judge Reid. Here's the

1 transcript. She told Mr. Boies, you can definitely get these
2 two people in January. Judge Altman denied the motion to stay.
3 They're just asking for two. And we don't have a date.

4 THE COURT: OK. Mr. Wissner-Gross. Who is going to
5 handle that?

6 MR. WISSLER-GROSS: Your Honor, I think,
7 unfortunately, that Mr. Moskowitz has mischaracterized the
8 transcript. As I recall, and I'm happy to go back, I think we
9 said we are not sure of their availability.

10 We have gone back to check their availability.
11 They're available between February 25th and February 28th. We
12 have asked if those dates would work. We have asked for dates
13 for them for March. Some of this gets tied into their work at
14 the Mavs in terms of other commitments.

15 We have been advised --

16 MR. BEST: Including the All-Star Game, which they are
17 utterly and completely consumed with during this period of
18 time.

19 THE COURT: Mr. Best, I really appreciate your
20 comments but it is hard for me to hear both you and
21 Mr. Wissner-Gross, and since you are both on the same team, so
22 to speak, I will hear what Mr. Wissner-Gross has to say.

23 MR. WISSLER-GROSS: They are available in Dallas
24 during the period February 25 to February 28.

25 THE COURT: Why can't they be available earlier?

1 MR. WISSNER-GROSS: They're just not. I mean, our
2 understanding is they are not available. As Mr. Best said,
3 they have other commitments with the Mavs.

4 THE COURT: Because of work commitments?

5 MR. WISSNER-GROSS: Yes.

6 THE COURT: So, Mr. Moskowitz, why do you need to
7 depose them before the February 25th date?

8 MR. MOSKOWITZ: Your Honor, this was the only
9 depositions we were seeking. Now the discovery has been
10 pending five months. These are individuals that the Mavericks
11 identified under oath as having personal knowledge of the
12 Voyager/Maverick connection and the press conference. This is
13 their marketing director. So if there is anybody who is going
14 to know about jurisdictional discovery, it is going to be them.

15 THE COURT: OK.

16 MR. MOSKOWITZ: We know that the January 3rd
17 discovery, your Honor, those 25 documents, they didn't include
18 a single document from any of those four individuals. So
19 clearly it falls within jurisdictional discovery, but as
20 Mr. Boies told you, how is it fair if we have been asking for
21 four months for these two individuals and he said you can give
22 Mr. Cuban 90 days, he may be some billionaire, although he was
23 on CNBC yesterday talking about cryptocurrency, but give him
24 three months. But just these two regular professionals that
25 have personal knowledge, you are going to give them November,

1 December, January, a pass for all of this, when now Judge
2 Altman has finally set a deadline of February 24th? They
3 ironically want to give us the day after we have to do it?

4 Your Honor ruled, and with have the transcript. If
5 they need the transcript -- you said to Mr. Boies: What would
6 you like. He said: Judge, I would just like them in January.
7 And you said: I see no reason why that can't happen.

8 That is how we ended up. That was your Honor's ruling
9 December 20th. So you had given them six weeks to give us any
10 two dates for these individuals, that are not the President of
11 the United States. There is no apex affidavits. There is no
12 affidavits in the record that they have some incredible
13 responsibility.

14 You told Mr. Boies: I think getting them in January,
15 if they're demanding plaintiffs' depositions, that's
16 reasonable. And we never got it. Now we are up to January 6th
17 and we still don't have their deposition.

18 I think it is reasonable for you to order them within
19 the next 30 days to give us one day in any location -- we will
20 go fly out there -- to take each of their depositions. Judge
21 Altman denied the motion to stay. This is all we have. We are
22 not asking for ten depositions. We asked for two, and the only
23 reason we picked them is they identified them as personal
24 knowledge about the Voyager/Mavericks contract and about the
25 press conference where Mr. Cuban says I'm targeting all of the

1 Mav fans around the country. We think that's reasonable.

2 THE COURT: Mr. Moskowitz, when did they identify
3 these two witnesses?

4 MR. MOSKOWITZ: I believe in August to state early
5 December.

6 THE COURT: OK. Mr. Wissner-Gross, I'm very concerned
7 that the first date they are available is the date after the
8 motion must be filed. I'm very concerned. There must be some
9 way to get them earlier than that.

10 MR. WISSNER-GROSS: Your Honor, first of all, let's
11 correct the record. He said that they were identified four to
12 five months ago. They were first identified in November.

13 THE COURT: OK.

14 MR. WISSNER-GROSS: Not four to five months ago.

15 THE COURT: All right.

16 MR. WISSNER-GROSS: In November in a discovery
17 response. I don't remember when. It was thereafter that he
18 requested their deposition. So not four to five months ago.
19 They were first identified in November and then in December at
20 the hearing.

21 As I recall -- I can go back and check the
22 transcript -- I had indicated that we weren't sure about their
23 availability. I know Mr. Boies interjected in the end, well,
24 gee, we'd like to take them. These are senior executives.
25 Mr. Best has talked about their commitments. They are not

1 retired like some of the plaintiffs.

2 THE COURT: I understand.

3 MR. WISSNER-GROSS: They have travel and other
4 commitments. I actually -- we could give them dates in March,
5 but would it be any different if he wants March? These are the
6 first dates. I haven't spoken to them. This is what been
7 communicated to me as the earliest availability.

8 THE COURT: OK. Well, here's the court's concern.
9 Because we have an extended deadline now of February 24th,
10 their depositions are needed prior to that.

11 MR. WISSNER-GROSS: He can say as much as he wants
12 that they are relevant to jurisdiction. They have nothing to
13 do with jurisdiction. You know what, he is going to get
14 document production on a rolling basis --

15 THE COURT: So then maybe what we need to do --

16 MR. WISSNER-GROSS: -- starting on the 13th. If he
17 sees --

18 THE COURT: -- is have their document production to
19 show that they don't have any knowledge.

20 When will their documents be produced?

21 MR. WISSNER-GROSS: Let's prioritize that on a rolling
22 production. He is not bashful. If he thinks that there is a
23 credible basis, that he really needs them on the issues of
24 jurisdiction, for example, we can come back to the court.

25 THE COURT: OK. So let me go back to that. When were

1 documents requested from those individuals?

2 MR. WISSNER-GROSS: Unfortunately, I haven't been
3 involved. It is the associates. My understanding is that
4 there was a general search which would have covered them as
5 well as part of the process by which the jurisdictional
6 documents were produced. So I think there was a search within
7 the Mavs organization for any hits for Florida or contacts that
8 would have been relevant.

9 MR. MOSKOWITZ: Your Honor, this is my concern. Your
10 Honor, this is my concern. When we got the jurisdictional
11 discovery, OK, and that is why I played those videoconferences
12 for you. This is a national press conference where he says
13 we're targeting our Mavs fans all across the country, and Steve
14 Ehrlich is saying the reason we got Mark Cuban is he is
15 nationwide known, famous, for cryptocurrency, and two weeks
16 later or a few weeks later Mark Cuban comes to Miami and he is
17 the headliner in the conference. So that is the targeting that
18 Mr. Boies asked you about.

19 They went and somehow got all the documents from these
20 four people that know about the conference and there is not a
21 single document about how they planned the press conference,
22 who they targeted. I mean, this is --

23 MR. WISSNER-GROSS: No, no, no.

24 MR. MOSKOWITZ: Can I finish?

25 This is a great corporation. They plan things very

1 carefully. So they know who they are targeting. They know who
2 they want to go after. Mr. Cuban says, we're going to do
3 education around the country, we're going to reach all of our
4 fans. Where are the documents about all of that, where their
5 marketing people are going to target? How much was the
6 response? We know 40 million was sold in the State of Florida.
7 It was a very successful press conference.

8 So what I'm saying is they went through, they said
9 they did a check. They didn't because they didn't produce one
10 document from these four. So let's get their documents next
11 week and let's get a date within the month to depose these two
12 people.

13 In any other case besides a billion dollar damage case
14 like we have here two depositions and their documents would be
15 nothing. We just went through the investors that are
16 struggling. Here we want two Mav executives that in November
17 were identified as having personal knowledge. Not just
18 involved, they had personal knowledge. We want all their
19 documents within -- it was supposed to be January 3rd. Give
20 them another week and give us their documents by the end of
21 January so we can use it before the February 24th deadline. We
22 think that's very reasonable.

23 MR. WISSNER-GROSS: Your Honor, I'm advised, and this
24 is the qualification -- I didn't personally do the document
25 review -- I am advised in realtime that in connection with the

1 January 3rd production that any jurisdictional documents these
2 two individuals would have had have been reviewed. In other
3 words, there's been no self-selection.

4 Again, I come to the point that I think Mr. Moskowitz
5 is embellishing substantially in terms of the -- at the press
6 conference itself what actually Mr. Ehrlich said is he is
7 looking at an opportunity for developing crypto in Dallas. You
8 won't find any reference to Florida.

9 THE COURT: I'm struggling to understand. There's a
10 lot --

11 MR. WISSNER-GROSS: That becomes -- in any event,
12 we're happy --

13 THE COURT: Mr. Wissner-Gross, I'm struggling to
14 understand something here. OK. There were documents requested
15 at some point from representatives of the Mavericks regarding
16 the press conference?

17 MR. WISSNER-GROSS: The request is -- documents in
18 connection with the press conference are part of the general
19 review that I said is going on. We are going to be giving
20 rolling production on the 13th.

21 THE COURT: And those documents have not yet been
22 produced.

23 MR. WISSNER-GROSS: What we did is we accelerated the
24 production for January 3rd for any documents, regardless of
25 from whom, that would relate to any contacts by either the

1 Mavs, and these two individuals work for the Mavs, or Mr. Cuban
2 with Florida. So if Mr. Cuban, for example --

3 THE COURT: OK.

4 MR. WISSNER-GROSS: -- if he had a family vacation in
5 Florida, it was produced.

6 For the Mavs, the search was done to see if there are
7 any contacts whatsoever by the Mavs in any respect to the State
8 of Florida.

9 THE COURT: That's Florida.

10 MR. WISSNER-GROSS: Yes.

11 THE COURT: Now we are talking about press conferences
12 and promotions.

13 MR. WISSNER-GROSS: There's only one press conference
14 on January -- excuse me, on October 27, 2021 in Dallas. One.
15 That's it.

16 THE COURT: OK.

17 MR. WISSNER-GROSS: No --

18 MR. BOIES: Your Honor --

19 THE COURT: OK. So have you produced the documents
20 with respect to that?

21 MR. BOIES: Your Honor, can I just address one thing?
22 They said that they produced all the jurisdictional documents.

23 THE COURT: Right.

24 MR. BOIES: The problem is, what they did, and this is
25 what they said, they produced all the documents with respect to

1 travel.

2 THE COURT: Exactly.

3 MR. BOIES: Jurisdiction is broader than that.

4 THE COURT: Than physical presence. That is what I am
5 trying to get at with Mr. Wissner-Gross.

6 MR. BOIES: It's been almost a month, not quite a
7 month, it was almost a month since they were told to produce
8 people in January. I know people are busy. Most of my
9 practice is representing large corporations. Executives make
10 themselves available for depositions in court cases,
11 particularly when it is a one-day deposition in federal court.
12 So it just can't be that these two people can't be made
13 available for a deposition in January.

14 THE COURT: It seems to me that that is the case.

15 We are going on cross-purposes, Mr. Wissner-Gross. If
16 you are talking about, yes, you produced documents with respect
17 to connections with Florida, but we are talking about
18 connections with respect to promotion of cryptocurrency by
19 Mr. Cuban, and it is bigger than that. So my concern is this.

20 These two individuals have been identified by your
21 company, by your client as individuals having that knowledge.
22 They need to be available for depositions before, significantly
23 before February 24 in order for their knowledge, their
24 testimony, their information to be part of the response with
25 regard to jurisdiction.

1 MR. WISSNER-GROSS: Your Honor, can we --

2 THE COURT: So let's go back and see if you can
3 discuss with them their availability prior to February 24th,
4 and it would at least have to be within the first two weeks of
5 February.

6 MR. WISSNER-GROSS: So are you talking about their
7 knowledge with respect to issues pertaining to jurisdiction or
8 more generally?

9 THE COURT: Well, let's not say jurisdiction because
10 when we say that word we don't have the same understanding.

11 MR. WISSNER-GROSS: Your Honor, we respectfully submit
12 that we are happy to prioritize the production, the rolling
13 production to focus on documents, for example, on the press
14 conference --

15 THE COURT: Good.

16 MR. WISSNER-GROSS: -- whatever role they had with the
17 press conference. Let's do that. Then if the plaintiffs think
18 that there is a basis for --

19 THE COURT: No, prioritize it for before the end of
20 January.

21 MR. WISSNER-GROSS: I am talking about not deposition,
22 but let's give them the documents.

23 THE COURT: Good.

24 MR. WISSNER-GROSS: I don't think there is a credible
25 basis --

1 THE COURT: Let's start with that. Documents before
2 the end of January. But then deposition.

3 MR. WISSNER-GROSS: Let's prioritize that and let the
4 plaintiffs make -- because I don't think they will be able to
5 make the case -- let them make the case as to why they
6 absolutely need to have these two individuals before the 24th.

7 I mean, they are going to have, as I said, on a
8 rolling basis all the documents that relate to the press
9 conference, relating to any interactions, the Mavs with Voyager
10 after the press conference, relating to the approach to the
11 Mavs that was by Voyager beginning in August. They will have
12 that.

13 MR. MOSKOWITZ: Your Honor, we are back-pedaling now.

14 MR. BOIES: Allen, Allen, Allen, can I just say
15 something?

16 THE COURT: Excuse me. Everyone. Everyone. Hold on
17 just a minute.

18 Mr. Wissner-Gross, I don't want to have to come back
19 on this issue, and I don't see any reason to. I think, yes, I
20 agree you should prioritize your document production for that
21 before the end of January, but I would like for you to go back
22 to these individuals, Mr. Mackey and Mr. Tapply, and get dates
23 prior to February 24th for their depositions.

24 MR. WISSNER-GROSS: We will go back and consult with
25 them, your Honor. As I said, I am not the one in contact with

1 them. I mean, I was told that they have other commitments.

2 THE COURT: I understand.

3 MR. WISSNER-GROSS: Business commitments. These are
4 the dates they are available. I did not want to give dates in
5 March. I figure that I could do March, but I tried to figure
6 out what the earliest date was available.

7 Respectfully, your Honor, I still think that the
8 articulation of the concept that because the law is that if
9 there is a press conference in Dallas that that provides a
10 basis for jurisdiction in Florida is just not supported in the
11 law.

12 THE COURT: And we can argue that. We can argue that,
13 but I don't want to go down that road. That is the allegation
14 that's been made and the discovery needs to be then produced
15 prior to the 24th. We have already asked Judge Altman for an
16 extension and he has been very generous in granting that. So
17 we want to work within that extension.

18 As I understand it, you are going to prioritize any
19 document discovery for those gentlemen before the end of
20 January and then go back to them and get a date prior to the
21 24th of February for their deposition.

22 MR. WISSNER-GROSS: On a rolling basis, as I said. We
23 explained to you the process we are going through.

24 We spent a lot of time and effort. They can minimize
25 as they want. We did produce a lot of documents on

1 jurisdiction. The fact that it doesn't show what they want it
2 to show, and it's confirmatory exactly what is in the
3 declaration, doesn't mean that we haven't done a lot of work to
4 produce everything.

5 THE COURT: I appreciate that.

6 MR. WISSNER-GROSS: We hear you, your Honor. So I
7 will go back and we will speak internally.

8 THE COURT: I appreciate that. OK. So we have
9 resolved that. So going back to the issue with regard to the
10 depositions of the plaintiffs. Because there are documents
11 still to be produced in advance of their depositions, and we
12 don't know yet their availability for the dates on the 12th and
13 the 13th, what I propose is that both sides work as quickly as
14 possible to get those documents in order and produce, plaintiff
15 should produce the rest of the documents requested as we have
16 discussed. However, we have to be cognizant of the fact that
17 there are schedules involved.

18 The dates of January 23rd and 24th have already been
19 offered, and they certainly fall within the month of January
20 and are well within the discovery period for February 24 that
21 the court has extended. So if it has to be that those
22 depositions are on the 23rd and 24th, I see no prejudice to the
23 defendants, and that the only give them more time to review the
24 documents that the plaintiffs are producing by the end of next
25 week.

1 So having heard all of the arguments, I think that has
2 resolved most of the major issues that we needed to look at
3 today.

4 MR. MOSKOWITZ: The only remaining issue, Judge, is a
5 small one but it relates to jurisdiction. One of the
6 components by the Supreme Court is whether you have a financial
7 interest when you're targeting that district. They have
8 already told us that Mr. Cuban had his own Voyager account.
9 He's very happy with it. He traded in it for a few months.
10 All we have been asking for is give us the information for
11 Mr. Cuban's trading account, and we'd like to have that next
12 week. We thought that was --

13 MR. BEST: Your Honor, I'll make this clear, your
14 Honor. At the same time they turn over the trading information
15 for their Florida-based clients, we'll turn over the trading
16 information, now that we understand that this is not a
17 jurisdictional discovery deposition for Cuban, we will be
18 turning it over as well.

19 MR. BUSHMAN: We turned it over last night, your
20 Honor.

21 MR. MOSKOWITZ: We turned ours over, and this is
22 just -- David.

23 MR. BOIES: If they say they will turn it over when we
24 turn it over, we ought to accept that and we ought to make
25 clear that we be sure we turn ours over and then we want to ask

1 them for theirs.

2 MR. BEST: Thank you very much.

3 THE COURT: That sounds like an excellent plan.

4 All right. Thank you, gentlemen.

5 (Adjourned)

6

7 C E R T I F I C A T E

8

9 I hereby certify that the foregoing is an accurate
10 transcription to the best of my ability of the digital audio
11 recording in the above-entitled matter.

12

13 January 9, 2023

s/ Joanne Mancari
Joanne Mancari, RPR, CRR, CSR
Court Reporter
jemancari@gmail.com

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A VOICE: [2] 13/7 35/7
 MR. BEST: [34] 4/21 13/8 13/23 14/12
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 MR. BOIES: [21] 4/12 4/17 25/8 34/23
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 MR. BUSHMAN: [60] 48/25 49/2 49/5
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 MR. MOSKOWITZ: [54] 4/7 5/13 9/25
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 MR. WISSNER-GROSS: [132]
 MS. WOLKINSON: [1] 54/11
 THE COURT: [231]

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